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FBI AUTHORIZATION REQUEST FOR FISCAL YEAR 1986

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

FBI AUTHORIZATION REQUEST FOR FISCAL YEAR 1986

APRIL 17, 24, AND 25, 1985

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FBI AUTHORIZATION REQUEST FOR FISCAL YEAR 1986

WEDNESDAY, APRIL 17, 1985

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Conyers, Schroeder, Schumer, and Sensenbrenner.

Staff present: James X. Dempsey, assistant counsel; and Phil Kiko, associate counsel.

Mr. **Edwards**. The subcommittee will come to order.

Mr. **Sensenbrenner**. Mr. Chairman.

Mr. **Edwards**. The gentleman from Wisconsin.

Mr. **Sensenbrenner**. I ask unanimous consent that the subcommittee permit coverage of this hearing in full or in part by television broadcast, radio broadcast or still photography in accordance with committee rule 5.

Mr. **Edwards**. Without objection, so ordered.

This morning we are going to begin our hearings on the fiscal year 1986 authorization request for the FBI. For 1986, the Bureau is requesting an authorization of $1,185,664,000 to support 21,408 positions. This is more than double the appropriation for the FBI in 1980.

Recognizing, Mr. Director, that things have changed a great deal, I note with some irony that when I was an agent in 1941, the FBI's budget was less by $1,171 million. You know, 1941 was a pretty risky era in our history, too. But even so, times have changed.

As our witness this morning, we are honored to have the Director of the FBI, Judge Webster. It is always a pleasure to have Director Webster here and we welcome him. While from time to time we have our policy differences with you, and I am sure we are going to continue to have some, we deeply value your stewardship of the FBI and the work that you and your associates do.

Several issues have been raised in connection with this authorization request that are of concern to the subcommittee. One is the proposal to add to the NCIC a new file, known as the Economic Crime Index. As we understand it, this would be a file of investigatory data and would represent a troubling departure from the NCIC's present format.

A second area that we are going to want to discuss with you, Judge Webster, are reports that we have seen of FBI visits to persons opposed to U.S. policy in Nicaragua. If these persons are not suspected of criminal activity—and opposition to government policy is certainly no crime—the FBI contacts with them raise some problems.

Other than that, we welcome you and I yield to the gentleman from Wisconsin.

Mr. **Sensenbrenner**. I have no opening statement.

Mr. **Edwards**. I yield to the Congresswoman from Colorado.

Mrs. **Schroeder**. I thank you, Mr. Chairman, and I especially am interested in the second part of what you pointed out. I know my office has even gotten phone calls asking members of the staff to report people that they saw at Central American rallies and I find that very, very offensive and would like to know what is going on in that area. I would like to emphasize that again and thank you very much for being here.

Mr. **Edwards**. Thank you, and you may proceed, Judge Webster.

TESTIMONY OF HON. WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. **Webster**. Thank you, Mr. Chairman, members of the subcommittee. I am again pleased to appear before you at the annual authorization and oversight hearing of the Federal Bureau of Investigation. My opening remarks concern the FBI's accomplishments during the past year and some of the progressive measures we are taking to increase our future effectiveness.

Since 1982, the FBI has invested the majority of our allocated resources in the investigative areas that we have designated national crime and national priority programs, terrorism, organized crime, white-collar crime and foreign counterintelligence. That investment has paid significant dividends for the FBI and, ultimately, for the American people.

The Terrorism Program exemplifies the successes which can be achieved, given the resources to counter an extremely dangerous threat to our society. For the third continuous year, terrorist incidents have declined in the United States from 31 total incidents in 1983 to 13 in 1984—I might add, there were 51 in 1982—making it the lowest number since the FBI began keeping statistics in this area. Much of this success stems from our ability to prevent terrorist incidents, which has increased dramatically through evolving agent expertise and improved analytical capabilities. The Terrorist Research and Analytical Center at FBI headquarters, established in 1980, computerizes and analyzes data on known terrorists and terrorist groups in the United States. The terrorist threat assessments produced by the center provide the flexibility to realign our resources to target the most volatile individuals or groups.

During 1984, nine terrorist incidents were prevented in the United States, including the planned assassination of the President of Honduras and the overthrow of the Honduran Government; a hit planned by two Libyan students who were introduced to an undercover agent in order to purchase automatic weapons with silencers; a planned armored truck robbery and two prison escapes by individuals associated with the New Afrikan Freedom Fighters, a militant subgroup of the Republic of New Afrika; and other potential violent acts by members of domestic terrorist groups, the United Freedom Front, the Sheriff's Posse Comitatus, and the Aryan Nations.

During 1984, the United States was the site of several major events, including the Olympic Games at Los Angeles, the Republican and Democratic National Conventions, and the World's Fair in New Orleans. These events presented attractive targets for terrorist groups seeking notoriety and furtherance of their goals; yet they were incident-free. As the designated lead Federal agency for the handling of investigative and intelligence-related activities for these events, the FBI made a tremendous commitment of resources and demonstrated, through close cooperative effort with local law enforcement and other Federal Government agencies, that the terrorist threat could be countered.

Despite our accomplishments in this program, past history and current events worldwide dictate the necessity to remain vigilant and aggressively fulfill our responsibilities within the requirements of the law.

The FBI's Organized Crime Program investigates those individuals who are members or associates of the major organized crime groups across the country. Included are the traditional organized crime families which comprise the LCN, or La Cosa Nostra, nontraditional organized crime groups, such as the Bandidos, the Pagans, the Outlaws, and the Hell's Angels outlaw motorcycle gangs, and those groups and/or individuals involved in narcotics trafficking.

Historically, we have investigated organized crime groups and related individuals for their involvement in the racketeering activities of gambling, corruption, and loansharking. This approach has been augmented by the reemphasis and enactment of laws giving us jurisdiction in the investigation of labor racketeering, hoodlum infiltration of business, arson for profit, narcotics trafficking and pornography operations which are national in scope and involve major organized crime figures or involve children. Our goal is to systematically and progressively interdict and reduce the sphere of organized crime and its effect on the American people. It is a goal, I believe, that can be achieved.

In fiscal year 1984, our investigations resulted in 2,194 convictions in the Organized Crime Program, a 61-percent increase over fiscal year 1983. We have dealt organized crime a serious blow through the conviction of 159 LCN members or associates; the conviction of 1,570 individuals involved in narcotics trafficking; and have reinforced this effort by the indictment of the leaders of the five LCN families in New York City; and the indictment or convictions of members of all the major outlaw motorcycle gangs.

The White-Collar Crime Program has three major investigative priorities: government fraud, public corruption and financial crimes. Crimes in this program generally involve the enrichment of individuals who, through deceit or other nonviolent means, violate a private, governmental or public trust. The complexity of these cases, combined with the limited resources available to investigate these matters, forces us to concentrate our efforts on high-impact cases most likely to lead to successful prosecutions. As a result of this approach, 4,449 persons were convicted or entered pretrial diversion programs in fiscal year 1984. Major program successes have been achieved through the United States in the past year. For example, in Florida, three individuals were convicted on government fraud and bribery charges and ordered to pay $7,100,000 in restitution to the United States. In Oklahoma, as of February, 223 individuals, many of whom were county commissioners, have been convicted of accepting kickbacks from vendors doing business in that State, and in places as diverse as Chicago, IL; Guadalupe County, NM; Clay County, NC; and Duval County, TX, FBI investigations of public corruption and election law violations have resulted in the convictions of numerous public officials, including magistrates, sheriffs, commissioners, and county assessors.

Mr. Chairman, I am not at liberty to discuss in detail our Foreign Counterintelligence Program; however, I would like to assure you and the subcommittee members and the American people that the FBI is committed to this program. The growing number of officials, tourists, commercial representatives, and students in the United States from the Soviet Union, Soviet bloc countries, Cuba and the People's Republic of China mandates that we intensify our efforts to identify foreign intelligence officers and neutralize their efforts.

We have had our recent publicized successes; however, recent published reports of successful espionage activities by hostile intelligence services in other countries only demonstrate to us that there is a real and continuing threat to the security of the United States.

Despite our past accomplishments, we realize that reevaluation of our investigative priorities and techniques and development of new investigative tools are a necessity to stay abreast of the evolving trends in criminal activity. Computerization of priority investigative program data and the resultant analytical capability that process provides are keys to our future success. This computerization process has reached the development and/or implementation stage in most of our priority investigative areas, including the Terrorism Program, the Organized Crime Program with the current use of the Organized Crime Information System and the Foreign Counterintelligence Program.

Major case management is enhanced in all investigative programs with the exception of foreign counterintelligence through the Investigative Support Information System. In addition, agents working narcotics matters make use of the El Paso Intelligence Center computer through our liaison agent assigned there.

The FBI-managed National Crime Information Center, which we call NCIC, currently provides the FBI, and approximately 62,000 other Federal, State and local criminal justice agencies with an important tool in the investigation of the thefts of property and the location of wanted and missing individuals. NCIC, since its inception, has continued to be most responsive to criminal justice requirements. The Interstate Identification Index, popularly known as III, conceived in 1978 and implemented in a testing mode in 1983, provides NCIC users with access to approximately 9 million criminal arrest records originating from some 17,000 law enforcement and criminal justice agencies. III, which is still in the testing phase, would decentralize the FBI's recordkeeping responsibility and would serve as a "pointer" system that would identify where records could be obtained. Currently, 21 State identification bureaus are either participating in III testing or are actively working toward participation.

The enormity of the white-collar crime problem in the United States was highlighted in a 1982 study showing that these schemes cost our society $200 billion a year. Bank failures and credit card fraud have cost the Government, private citizens, and corporations hundreds of millions of dollars. Studies have shown that many of the bank failures and fraudulent schemes are caused on a nationwide basis by individuals utilizing the latest in communications, marketing, banking and computer technology. On April 2, 1985, Attorney General Edwin Meese and I signed an agreement with the four Federal banking regulatory agencies designed to improve the detection, investigation and prosecution of bank fraud cases, particularly those involving criminal misconduct on the part of bank officers.

Mr. Chairman, as you are aware, the FBI, in conjunction with the Attorney General's Economic Crime Council, is studying ways to address the white collar crime fraud problem, including the possible establishment of a computerized Economic Crime Index. As this particular topic will be the subject of a future hearing by this subcommittee, I need not comment further except to say that we welcome the opportunity to receive your views and suggestions as we work to produce investigative tools to combat this ever-growing problem.

Mr. Chairman, this concludes my prepared remarks and I would be very happy to respond to your questions at this time.

[The statement of Mr. Webster follows:]

OPENING STATEMENT OF WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman and Members of the Subcommittee:

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This concludes my prepared remarks. I would be happy to answer your questions at this time.

Mr. EDWARDS. Thank you very much, Judge Webster. I believe that you and your people at the FBI should be congratulated on a very successful year.

The gentleman from Wisconsin, Mr. Kastenmeier, is recognized.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Judge Webster, as you know, I have very high regard for you and I think you have made a generally good statement in support of the many activities the FBI is charged with handling.

However, I think a couple of observations are necessary. The level of new staff positions that are requested seems to be a matter which should be reviewed. I think you have given an excellent summary of why the FBI's funding should not be reduced, but in this year of general reductions in the Federal establishment, I would think that there is an extraordinary burden on the part of any element of the executive branch to seek expansion.

I would like, however, to talk about a different matter, and that is the increased numbers of cases of the Federal Bureau of Investigation or its agents confronting individuals with reference to their interest in Central America. I thought a couple of weeks ago there was only a single case. I know this subcommittee has raised questions about that case, as I have personally to you, but now it appears that this is a pattern or practice that is extensive today throughout this country, and it seems to involve the confrontation of a number of American citizens by agents of the Federal Bureau of Investigation in which essentially they seek to chastise or educate American citizens politically.

I think this is a very bad scene. We are well aware that in countries behind the Iron Curtain citizens are educated or reeducated by official arms of the Government, but the Federal Bureau of Investigation must know that, unless crimes are committed, this is a very, very chancy area for it to get into. This country is very divided on what the policy ought to be in Central America. The minority leader only yesterday said there are not the votes to give the Contras aid.

One could argue, I think persuasively, that if there are violations of Federal law, it may be that it is those who are aiding the Contras, notwithstanding the fact we have peaceful relations with the country of Nicaragua, who are violating the law. Yet I am not aware that people are being prosecuted in that situation or that people are being confronted personally or reeducated politically.

I say that in the context of an FBI request for more and more agents, because people can ask, "For what purpose? Are American citizens who are politically active in supporting one side or another, either in El Salvador or Nicaragua, going to be confronted by these new agents?"

So the request that the Justice Department makes in behalf of the FBI in terms of personnel will be viewed in that light by many of us. I would solicit your comment, if any, Judge Webster.

Mr. WEBSTER. Congressman Kastenmeier, I certainly agree with you that it is not the function of the FBI to educate individuals with respect to political issues, nor is it the function of the FBI to in any way chill the free exercise of expression with regard to those political issues.

I am not aware of any specific information of such activity and if you or any other members of the committee have such specific information, I would be very happy if you would share it with me because that would be contrary to the instructions given our agents in the field. I can tell you that the FBI has a legitimate foreign counterintelligence interest in certain activities involving the agents of the country of Nicaragua.

I can tell you that we have, in pursuit of that interest and pursuant to specific tasking under Executive Order, conducted a number of interviews. However, the number of interviews is nowhere near the scale that has been implied or to which I think you must have the impression. Of the thousands of people going back and forth to Nicaragua, I am informed that we have interviewed less than 100, or in the approximate area of 100 people.

In every instance, there was a specific counterintelligence reason for doing so. Obviously, I can't discuss the particulars of that in an open session. Our responsibilities require us to conduct certain interviews in order to develop or resolve information of a foreign counterintelligence nature. It has nothing at all to do with the political issues involved in Nicaragua or whether the FBI favors or opposes the current Government, the current regime, or the Contras. We do not have political views, but we do have foreign counterintelligence responsibilities.

We are not—as I said, we are not wholesale investigating everyone who is going to Nicaragua or coming back from Nicaragua, but just as we do with other countries in which we have specific counterintelligence interests, we do conduct interviews to ascertain or resolve information that we have received elsewhere. I can assure you that if any of our agents are improperly attempting to suggest their views or my assumed views to other individuals, they will be promptly dealt with if I have the information and it proves to be correct.

Mr. **Kastenmeier**. The case was brought to our attention—which we have quotations from individuals who have been contacted by agents such as "We try to interview everyone who makes a trip to Nicaragua. We do it for positive intelligence gathering," an agent said to a Detroit woman who had been to Nicaragua.

Mr. **Webster**. I saw that statement, too, and I made immediate inquiry. I am informed that agent is absolutely incorrect and appropriate informative advice is being given on that. But the facts are as I outlined them. Thousands of people are coming and going to Nicaragua. We have interviewed approximately 100.

Mr. **Kastenmeier**. I assume we would like to explore some of these reports to the committee at a staff level because they are very distressing. It really constitutes, I would say, intimidation in some cases. One could make an argument about that, but there is a chilling effect which we are concerned with and also, whether or not, directly or otherwise, it constitutes politicization of the Bureau.

My time has expired, Mr. Chairman, and I am sorry to take so much of it.

Mr. **Edwards**. Thank you, Mr. Kastenmeier.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you, Mr. Chairman.

I would like to pursue Mr. Kastenmeier's line of questioning a little further. Does the Bureau have some specific guidelines that trigger the selection of these 100 or so people for interviews?

Mr. **Webster**. The Bureau has specific guidelines for the conduct of foreign counterintelligence investigations. The guidelines are classified, so I am not at liberty to discuss them in an open session.

In addition to that, our responsibilities are laid out in a Presidential Executive Order and, pursuant to that order, we from time to time receive tasking from the National Security Council and the Director of Central Intelligence. These are the only avenues by which we can be asked to conduct positive intelligence gathering with respect to specific activities.

I have reviewed those taskings and find nothing in them inappropriate or suggesting any political effort, but simply efforts to identify the existence of hostile intelligence activity in the United States.

Mr. **Sensenbrenner**. That hostile intelligence activity could well be conducted by U.S. nationals——

Mr. **Webster**. That is correct.

Mr. **Sensenbrenner** [continuing]. As well as by foreign nationals who are legally present in the United States.

Mr. **Webster**. That is correct.

Mr. **Sensenbrenner**. Well, I am concerned that a number of newspapers of significant reputation and circulation have been publishing articles relative to the subject that Mr. Kastenmeier has brought up and it seems to me that if the subcommittee wishes to pursue this matter further, that a closed session would be in order so that the subcommittee members can find out specifically in closed session what information triggered the FBI asking questions because I don't believe that someone who might be gathering intelligence for Nicaragua should be treated any differently than someone who might be gathering intelligence for the Soviet Union or some other country that does maintain agents in the United States that bear watching and not just the Communist countries.

Thank you, Mr. Chairman.

Mr. **Edwards**. The Congresswoman from Colorado.

Mrs. **Schroeder**. I thank you, Mr. Chairman, and as I look at the files from my office, the inquiries that we have had in our office have not been from the FBI, but have been from the DIA. I am wondering what kind of connection you have with them.

For example, one of the phone calls concerned a church service. It was an ecumenical service that was given at the time of the anniversary of Archbishop Romero's assassination. The phone calls came into staff members asking them to identify people who attended the service. They found this very offensive.

The same phone calls went to many church people that participated in the ceremony, asking them to give names and other information about people that attended. What connection does the FBI have with the DIA and how do you work together and are you under the same criteria? I find that all likely to have a very chilling effect because if you are John Q. Public and you start getting these phone calls, it sounds like you are not supposed to participate in anything political unless it has gotten the seal of approval by someone in Washington.

Mr. **Webster**. I can't respond to the why of the telephone call because I am hearing that for the first time. That would not normally be the type of question or inquiry that the FBI would make. The FBI is responsible for the coordination of all foreign counterintelligence in the United States and no counterintelligence activities may take place in the United States without coordination with the FBI.

Mrs. **Schroeder**. Does that mean, then, when DIA is doing it, you are coordinating it?

Mr. **Webster**. If it is counterintelligence. Now, this may be viewed as positive intelligence gathering. I find that—

Mrs. **Schroeder**. How could it be positive intelligence gathering?

Mr. **Webster**. I can't answer——

Mrs. **Schroeder**. I find that shocking.

Mr. **Webster**. I can't answer that question, Congresswoman. Since I am really unaware of the incident that you describe, I can't really describe it. DIA, of course, has legitimate interests with respect to its own military operations in the United States and throughout the world. I will make an effort to find out more about this, but this is not the sort of inquiry that the FBI would make.

Mrs. **Schroeder**. I would be very happy to get the names of the church people and the people on my staff and the names of the people in the DIA who phoned them all about this. But it made no sense to me, from a military standpoint because who in the military could care about who went to a Catholic church in Denver to celebrate a mass? The incident was about as nonpolitical as a baptism. There were no brochures, no anything handed out. If you are telling me that the FBI coordinates these activities, that the only thing I could figure was surveillance of domestic activities, I guess the question I have to ask you is do you use the DIA to make these kind of inquires so you can say the FBI doesn't do it?

Mr. WEBSTER. No, we certainly do not. We would not have authorized that type of inquiry.

Mrs. SCHROEDER. If they are doing it, are you the agency we go to to get them to stop it? Where do we go then, if you are supervising it? Do you have the right to tell them to quit that type of thing?

Mr. WEBSTER. You have already told us about an incident and we will have to look into it and see what the actual facts were and I will be happy to do that.

Mrs. SCHROEDER. Do you know who has the authority to tell them to cease and desist that type of thing? Do you supervise just the information that comes out or who supervises the individual agents doing that?

Mr. WEBSTER. I am sure this is something that can be worked out within the intelligence community. Counterintelligence activity is not to take place in the United States without coordination of the FBI. In other words, we maintain a veto authority over proposed counterintelligence activity in this country.

Mrs. SCHROEDER. So you——

Mr. WEBSTER. There may be something here—I don't feel very comfortable discussing counterintelligence matters in open session, but there may have been a legitimate purpose. The manner in which that purpose was implemented may or may not have been appropriate, but I have to get more information before I can comment on that.

Mrs. SCHROEDER. We will get more information for you. I think it is important. I, again, want to compliment you. I think you have run the agency very well in most instances. I just had one more quick question. How has the Missing Children's Act been functioning from your viewpoint?

Mr. WEBSTER. From our point of view, it has been functioning well. The willingness of the FBI to list missing children or enter the names of missing children in the NCIC if a local law enforcement agency refuses to do so has not really increased the FBI's burden. A surprisingly small number of requests have been made of the FBI and I may have to correct my number for the record because I don't have it in my head, but I think between 200 and 300 requests have come to the FBI to do so.

On the other hand, the number of entries being made by local law enforcement has increased in a quantum way, almost, if I am not mistaken, almost double the amount of entries that were being made a couple of years ago. So I think that that has had a useful impact. The private sector has done a tremendous job in responding to this area.

We are working in partnership with the private sector to try to sort out and be on the alert for missing children. I recently attended a meeting in the White House of representatives of the private sector and of Government agencies involved and a followup report is due very shortly on steps that we are taking. I am encouraged by it and I think it has been a healthy thing for the country.

Mrs. SCHROEDER. I know that the members of this subcommittee would be very appreciative if you have any suggestions of things that we could do to further it based on your experience. Any ideas that you have for us, we would be more than happy to act on.

Thank you.

Mr. WEBSTER. Thank you.

Mr. EDWARDS. Judge Webster, I am sure, from the line of questioning this morning, you know how concerned we are and how interested we are in the possible politicization of, we will call it, counterintelligence insofar as Central America is concerned. It is a very hot political issue and there are a lot of people in the executive department who would like to enlist the CIA and the FBI on their side.

I have been around here a long time and so has Mr. Kastenmeier. We have seen it happen over and over again and very much to your credit and the credit of the other people in charge of the FBI, you have always resisted being politicized. You are going to have to be careful about any Executive Orders you get and if they violate this trust in the name of national security, I think I know you well enough for you to say, "Well, that Executive Order has got some problems."

When I think back over the last 10 or 20 years of the terrible things that have happened in the United States in the name of "national security," we really have to be terribly, terribly careful, and your agents have to understand that an investigation of an American is a very serious matter.

In at least one of these cases, your agent visited the landlord and the employer, according to our files. That is a very serious business. That can damage somebody irreparably, so I hope the word goes out that these cases are to be treated with great respect and very, very carefully.

Let me ask you this, Judge Webster, do you get requests or leads so that people coming from South Africa who are there against apartheid are interviewed by agents of the FBI?

Mr. WEBSTER. I don't believe so. Certainly, there is no official tasking and no counterintelligence interest. If we believe that an individual might have some information that would be helpful to us in carrying out our responsibilities, not as to them, but as to other activity that would be useful to us, we would certainly enlist their cooperation. I hope that there is a very clear distinction between the opportunity that comes to us by good citizens willing to share information, as many of them do without being requested and as others will do when being given a point of contact and the opportunity to cooperate, between that type of inquiry and a foreign counterintelligence investigation with a specific subject in mind or a specific activity in mind.

Now, I have to say, and I have to choose my words carefully in a public session, but I think you understand my meaning when I say that when we have occasion to interview a person who, for other reasons we believe or know is engaging in some form of clandestine activity in cooperation with a foreign intelligence agency, we may not want to disclose the source of our information or the nature of our knowledge to that individual and there may occasionally be pretextual reasons given for coming to talk to that individual.

Those pretextual explanations, if given, may form the basis for the individual either mistakenly or purposefully assuming a wrong reason for questioning them. We try to keep that to a minimum and we try not to use false information, but rather to not highlight highly sensitive sources of information.

That occasionally, I am sure, accounts for some of the confusion in reporting. Some of the individuals, I think, unquestionably are throwing red herrings out and others have an attitude about us that causes them to assume that we are somehow trying to chill them politically. We don't do this—I will not permit it to happen; I welcome any specific information and I will be glad to investigate any case where there is any allegation of that.

I know that this issue, this particular country, is an extremely sensitive political issue and we want to keep the Bureau out of politics. We do have intelligence responsibilities to carry out and I will give additional careful guidance to our agents on the kinds of questions that are to be asked during such interviews to be absolutely sure that we don't give anyone a foothold to complain that we are misusing our authority in carrying out this very important responsibility.

Mr. EDWARDS. Thank you, Judge Webster, I appreciate just what you said.

We wrote you on January 14, 1985, asking for more information on certain incidents. Our letter was triggered by a report from Michael Ratner, of the Center for Constitutional Rights, who had what he considered quite a list of incidents and we would appreciate a response to this.

How many American travelers to China would have been interviewed, for example? A hundred is a lot of people and maybe imperceptibly you are being pushed around a bit by people who are interested in this issue politically, people in high positions. I don't know. I know that there would be a tremendous temptation to do that.

Mr. WEBSTER. I think the temptation might be on both sides, Mr. Chairman.

Mr. EDWARDS. Of course, but can you or any of your staff present today tell us about how many Americans in the last year traveling to mainland China have been interviewed?

Mr. WEBSTER. I can't personally. I will see if anyone here can help me.

I don't think there is anyone here who is in the position to answer it. I would have to explore the extent to which we could make such a statement in public session.

Mr. EDWARDS. Well, it would be interesting. If there are 100 cases of little Nicaragua where the issue is so hot politically and where there is all this emotion and demonstrations and if coming from the No. 2 Communist country in the world, China—and if it is out of balance, I think that it ought to send a message to all of us.

Mr. WEBSTER. I will look into that and see what we can do.

Mr. **Edwards**. I appreciate the fact that you are going to take another look at it and I know Mr. Kastenmeier and Mrs. Schroeder appreciate it also.

Mr. **Webster**. Sometimes the numbers of people moving in and out of this country and to and from other countries are so large that people don't realize the relative smallness of the selective activity that we engage in. By way of example, I checked a couple of months ago and Iranian visas—you would think we were out of business with Iran. We are running 1,000 a month of people coming into this country from Iran. We have to keep track of some of that.

Mr. **Edwards**. Of course you do. We have another line of questioning, but I will yield to Mr. Kastenmeier.

Mr. **Kastenmeier**. I have no questions, Mr. Chairman.

Mr. **Edwards**. Mrs. Schroeder.

Mrs. **Schroeder**. No question, Mr. Chairman.

Mr. **Edwards**. We are certainly pleased, of course, with the declining number of terrorist incidents within the United States and all involved should be congratulated.

In testimony last year before the Senate, you referred to a library of information on terrorist groups and you stated that the library at that time was not computerized. Has it been computerized as of now?

Mr. **Webster**. Mr. Chairman, I apologize for the delay in responding. I was just talking to some of my colleagues and I was trying to remember the specific exchange that we had before. We have a general library that is available to the public of closed files and that does not include terrorist information on ongoing investigations. We have specific terrorist information in computer files on specific groups that are under investigation, such as the Aryan Nations, which resulted in recent arrests during the past several days.

I perhaps need a little help from you on——

Mr. **Edwards**. You don't have a computerized data base on suspected terrorists which might include radicals or people who just oppose U.S. policies in Nicaragua or wherever?

Mr. **Webster**. No; we do not, Mr. Chairman.

Mr. **Edwards**. That is fine.

Mr. **Webster**. During specific times like the Olympics, we gathered data to protect ourselves against that type of terrorist activity, but we don't—no, we do not have a radical file.

Mr. **Edwards**. The Bureau, and especially you, Judge Webster, ought to be congratulated on the message of moderation that you have constantly sent out with regard to the internal threat of terrorism. It is entirely different from the threat overseas.

Mr. **Webster**. Thank you, Mr. Chairman.

Mr. **Edwards**. I believe that all the members here today would also be pleased with your forthright statement on the closing of Pennsylvania Avenue in front of the White House, that we should not succumb and change the very nature of our society because of this perceived threat. I am sure your statement helped the American people understand the issue better.

You also are to be congratulated on the indictment of 23 neo-Nazis in the last several days. However, FBI Assistant Director William Baker said something in connection with those indictments that might have been overbroad. He said, "There are a lot of people out there who have sympathy for these groups. If the person on the fringe of a hate group thinks he is only minimally involved, he had better take another look." That is a little overbroad, isn't it?

Mr. **Webster**. I, of course, was not there and only know the part that was published. I believe that that statement was most probably in the context of the use of the RICO statute and to warn people that you can't be a little bit pregnant. I don't think he was talking about sympathizers in terms of emotional sympathy or verbal support, but someone who supplies a safe house or someone who lends a weapon or identifies a target, who might be the subject of inclusion in a broad RICO indictment such as the 23 yesterday.

I am sure that is all Mr. Baker had in mind.

Mr. **Edwards**. All right.

Mr. Kastenmeier pointed out you are asking for more agents. The big jump in funding, I believe, will be in foreign counterintelligence and yet for the first time in the FBI's history, one of your own FBI agents has been accused of passing secrets to the Soviets. I suppose you don't want to comment very much, but it is of concern, I am sure, to you and to us, that Special Agent Miller's indiscretions, which were rather public and known in the office, could have continued so long without him being transferred or disciplined or something.

Mr. **Webster**. I have had, as you may know, inspectors out there looking at that situation and I don't want to say anything in a public hearing that could in any sense reflect on an imminent trial. I don't believe that anything that has been developed relative to his personal encounters with the other individuals involved were known to members of the Bureau. The only thing that was really known about him was the general level of his work product and the fact that he was overweight and seemed unable or unwilling to do something about it. Nothing at all that would, I think, give any person a question about his loyalty to the United States. That is a very difficult thing to identify. What I take great satisfaction in in an otherwise sad situation is that it was detected under techniques that I don't think would have been available in your time. It was promptly investigated and aggressively investigated by agents of the FBI and I think we got there before the real damage was done.

Mr. **Edwards**. In my time, we hardly even had typewriters. [Laughter.]

Mr. Kastenmeier?

Mr. **Kastenmeier**. No question, Mr. Chairman.

Mr. **Edwards**. The gentleman from Michigan, Mr. Conyers, has arrived.

Mr. **Conyers**. Thank you, Mr. Chairman.

I want to welcome our Director here and ask him if he has any knowledge about the FBI visit to the Detroit citizen who had been to Nicaragua where the agent, when called by the woman's lawyer, said that "We try to interview everyone who takes a trip to Nicaragua. We do it for positive intelligence gathering."

Now, if that is what that additional money for foreign counterintelligence agents is going for, you can count me out.

Mr. **Webster**. Congressman Conyers, that statement may have been made, but the statement was not correct and appropriate measures are being taken to be sure that that agent and every agent understands that. Before you joined the hearing, I had reported that in the area of 100, probably less than 100 individuals have been interviewed out of the thousands coming and going from Nicaragua.

Mr. **Conyers**. Yes, but what kind of justification surrounds this particular citizen? Is she suspicious or potentially subversive or what?

Mr. **Webster**. I have to go back to the newspaper article to be sure I know which individual you are talking about, but I can assure you that there was a legitimate foreign counterintelligence purpose in every interview that has been authorized to date.

Mr. **Conyers**. Can I be made privy to this particular incident, since it occurs in the city that I represent?

Mr. **Webster**. I will be glad to discuss that with the Department. We don't normally go into investigative facts in ongoing investigations, but to try to assure you that we had a legitimate interest in making contact. I, for one, really have difficulty in understanding why an individual should feel that we have no right to make contact. This was a civil contact; it wasn't threatening; it was a request to get in touch with the FBI. If it is the newspaper article I read, a card was left behind. We are carrying out an important function for the U.S. Government. If we intimidated that person and threatened them or told them they were doing something they shouldn't have done, that is another matter.

Mr. **Edwards**. Will the gentleman yield to me?

Mr. **Conyers**. That is the most amazing statement I have heard this morning, sir.

Mr. **Edwards**. Mr. Conyers, will you yield for just a second here?

Mr. **Conyers**. I will.

Mr. **Edwards**. I think that that is a very important point, Judge Webster, and that is, certainly your agents have a right here and there and it is appropriate to contact people, but the problem here is that we have had reports that this is excessive insofar as Nicaragua is concerned. You yourself say it is over 100 people. Well, there is a right to travel in this country and if this is being politicized unknowingly, you want to know about it and we want to know about it.

Mr. **Webster**. Absolutely.

Mr. **Conyers**. But further, though, if you are telling me that you don't know if you can tell me about it, then we are all trapped by newspaper reports, both you and I. If there is something sensitive that requires that I not be told about it, I would be willing to accept that; but for you to tell me that nobody should object to a little friendly visit from a polite FBI agent who leaves his card and didn't harass you, I think that is the point that the chairman and some other members on this subcommittee take exception to, very deep exception to.

Friendly visits by the FBI because you went to Nicaragua are not part of our protocol in this country. The right to travel takes precedence over just somebody nosing around and I think it is pretty obvious what the political implications are with Nicaragua being on the front burner these days. So for you to see no reason for anyone to take umbrage about a friendly nonharassing visit is to make this a very important hearing if we don't do anything more than to clear that point up.

Mr. **Webster**. I certainly want to clear it up because I don't think we are talking to the same point. I suppose anyone can take offense at the FBI making contact with them, but I have never grown up in an atmosphere where a visit by an FBI agent, in and of itself, was some kind of threat.

Mr. **Conyers**. Well, where did you grow up?

Mr. **Webster**. We don't live in that kind of a country.

Mr. **Conyers**. I grew up in Detroit. I don't know where you grew up, where a Federal Bureau of Investigation agent coming to your house or an FBI agent's visit to a job, sir, can destroy a person's career. With no intention to harass or anything, just a perfectly legitimate visit. Police visits and FBI visits are not the kind of things in normal social intercourse that make people popular with their friends on the job or at home.

Now, come on, let's get real this morning. Friendly visits from the FBI are no good. They are not welcome in our society; not because we are anti-FBI or we hate the cops, but the implications of somebody being visited by an FBI agent have got to be obvious to the Director of the FBI, as well as it is to a Member of Congress.

Mr. **Webster**. We make every effort in our conduct and the rules by which we follow and our track record in the courts to be sure that our purpose is legitimate and our department is correct. We make most of our cases, Mr. Congressman, by knocking on doors and soliciting cooperation from fellow citizens. When that stops, we might as well close our doors and go home, but I think we are getting ourselves heated up over something that is not a basis for heat.

I can assure you that there has been a specific foreign counterintelligence purpose in every one of the interviews that have been conducted or contacts that have been made.

I will be glad to look into any information that you or anyone else has to the contrary. We have no political interest in this debate that is going on at the present time. We have not been asked to do anything which would aggravate that debate or create problems for the opposite position. We have not been told to interview everybody who comes or goes from Nicaragua. We have not been asked to make our presence felt in any community. We are doing our job.

We are feeling a little heat from those who don't seem to want us to do our job——

Mr. **Conyers**. Well, Judge Webster——

Mr. **Webster** [continuing]. And we are not going to respond to that anymore than we would from pressure to do our job improperly.

Mr. **Conyers**. The chairman of the subcommittee is pointing out the point that I am trying to make. There are people complaining about this. We are inquiring about it. We are the only ones in the Government that can. I would like to find out about this case.

I am sorry if I got overheated, but when you say that you grew up in a society where you didn't find anything unusual about your neighbors getting visited by the FBI and the cops, however friendly, then I think that that is a little bit unrealistic. I think that is the problem that I have with your not seeing anything wrong if there isn't any subversive activity or some connection that would make this legitimate. I would like to pursue this matter with you.

Now, the last question I have is your opinion about the collection of racial violence statistics, data on ethnic and racial violent acts, which are not in the FBI crime index right now. I have been trying to put them in for a number of years.

Do you have any objection to that being included in the reports that you make annually?

Mr. **Webster.** Congressman Conyers, we have a practical problem with that. As you know, from the events of the last week, the FBI has been very aggressively investigating terrorist conduct that is racially motivated. We have made significant arrests. A State trooper was killed yesterday as he followed up leads that were put out in our NCIC system.

Our problem with putting that information in is related to a lot of other problems or concerns that we share about the integrity of the NCIC system. We take the information from that system from some 16,000 law enforcement agencies who put criminal investigative data into the NCIC system. In other words, what you want us to do is to have the police officer in a small town make a judgment as to whether that particular conduct has a racial motivation.

Mr. **Conyers.** He has to do it in every other crime activity report.

Mr. **Webster.** He puts that——

Mr. **Conyers.** He reports a murder; he doesn't know that it was a murder. It may turn out that it wasn't. He has a judgment to call in every report that is made, sir. I am not asking him to play God in this matter, but if you are telling me that this is too hard for local law enforcement agents to do and that it is going to gum up the works, I would like to suggest to you, regarding these racial and religious acts of violence, that I was—our subcommittee was embarrassed to be told to go to the clipping service and clip newspaper articles of those that are reported. I think that is one of the most important things that we can do.

Here we are trying to terminate the problems of racial and religious prejudice and we don't even have a mechanism for having any notion as to whether the numbers are going up or down or anything. I wish you would give that some consideration.

Mr. **Webster.** I would be happy to explore with you and the members of the committee some way of measuring—if it is statistical information you want, of finding some way to measure it after the fact, if it is possible to do so after it has been tried in a court and we establish when we put homicide into our file, we don't put motivation in because we don't know motivation.

Mr. **Conyers.** We are not asking you to put motivation into these, sir. We just want them recorded. When a person burns a cross on a lawn, you don't have to ask him what his intention was. Now, when you deface a synagogue, maybe that is a close question, but there are lots of close questions. We are not trying to get motivation recorded in the FBI index, but when a person comes up and assaults you by a racially derogatory term, you don't have to ask what his motive is. In those cases, it would seem to me perfectly appropriate to have them included.

Mr. **Webster**. I certainly——

Mr. **Conyers**. They are as important to me as a bank robbery.

Mr. **Webster**. I certainly understand that and if there is a way that this kind of information would be helpful for legislative or other purposes, I would certainly want to cooperate with you, but I think we really have a mechanical problem.

Mr. **Edwards**. The time of the gentleman is expired. Mr. Conyers' subcommittee has held some splendid hearings on this subject and we do hope that you will take a second look at it. It is really very important to us here.

I believe that you might have misspoke about investigatory information in the NCIC.

Mr. **Webster**. I thought I corrected myself. I tried to correct myself.

Mr. **Edwards**. Oh, very good. Thank you.

The gentleman from New York, Mr. Schumer, is recognized.

Mr. **Schumer**. Thank you, Mr. Chairman, and thank you, Mr. Director, for being here.

I would like to switch the focus of the hearing a little bit and talk about III and NCIC, which is, as you know, something that I have been very concerned about. It relates, too, to an article in this morning's Washington Post where it is stated that a study is going to be done to expand the list of categories in the NCIC system.

My basic question is: Aren't we sort of proceeding backward? We are expanding the system while it is well known that the existing NCIC system, something I am supportive of, is not quite accurate, or could be made more accurate. Obviously, when you are depending on different localities in the States to enter information into a system, it is not going to be terribly uniform; it is not going to be completely accurate.

I would like to know, first of all, what data quality standards are there for State participation in the III system as of now?

Mr. **Webster**. We have an auditing system that is intended to try to identify quality of performance, what is coming in and whether or not it is information in sufficient detail. For one thing, to make sure that the 16,000—I think there are 60,000 people that follow it, but some 16,000 law enforcement agencies are putting accurate and complete information in that does not result in misidentifications because a known identifier was omitted or given inaccurately.

The State coordinating terminals in each of the States have a responsibility there for policing their own States and they do. And on occasion, we have wiped out thousands of files, as we did recently in one city where the information was not being accurately compiled——

Mr. **Schumer**. Which city was that?

Mr. **Webster**. Well, I don't want to single out one city for trouble and I don't want to deprive you of the information. May I supply that in some other method to you?

Mr. **Schumer**. Sure.

Mr. **Webster**. All right.

Mr. **Schumer**. But in any case, my basic question is: I know there is an auditing function. I also know that generally in the law enforcement community, there is a view that a lot more could be done to maintain the accuracy of these records. Do you agree with that?

Mr. Webster. Oh, I agree with that and it is a constant message. In the publications that the NCIC produces for its members and participants, we stress this again and again, how important it is. Not only that the information that goes into the files be accurate, but that they constantly purge their files and keep them current so that if someone is picked up or a charge is dismissed, that information be entered promptly and accurately.

We depend on the entire law enforcement community for the integrity of the system, but I agree with you, it has to be constantly audited and everyone kept sensitive to it. It is an important, extremely valuable tool.

Mr. Schumer. Isn't one of the problems that State criminal justice systems are so pressed in so many different ways that entering accurate information into their own files, which then, of course, comes into the NCIC and the III systems, isn't a very high priority of theirs?

Mr. Webster. I think they would like it to be a high priority, but sometimes it is pushed on the back burner. We try to keep it up on the front burner because half a million inquiries are being made every day into this system, and it is important that it be accurate.

Mr. Schumer. I agree.

I would like your opinion on this. Given the fact that there are significant accuracy problems—and I want to see accuracy in the system, both because I believe that our criminal justice systems must have accurate information in order to focus their scarce resources at the most significant problems, but also because I am concerned about protecting people, such as the two examples, at least, of mistaken arrests based on problems in the system—why go ahead and expand it until more is done to make the existing index more accurate, particularly when the expansion gets into areas that may get somewhat away from the original purpose of NCIC?

Mr. Webster. I think both have to proceed apace. The reference to the Economic Crime Index refers to a study that is currently under way. There has been, I think, perhaps too much public assumption about the status of the study. It is still a recommendation. It has not cleared my desk and we are looking at it very carefully. Perhaps one of the areas that I want to explore is whether the same objective could be achieved outside the system and perhaps in some other system.

It is a worthy objective because with the interstate and international con men, it is important for one State to be aware of an active, investigative interest of another State in the same individual. The proposal itself doesn't call for just loose information about con men or white-collar criminals. It has to do with do you have a case under investigation involving this individual, and even there, the proposal, as it is being considered, doesn't involve supplying any information at all, only referring the State making the inquiry to the State that has the information.

I think it is important to realize that we constantly remind our users that simply finding a hit, a match between their information and other information that we have, doesn't relieve them of the responsibility of automatically going directly to the State outside our system, through the NLETS system, to get confirmation and more information so that they don't jump on the information they have and make a wrong jump.

I do think we have to increase the accuracy of the information that comes into the system. But it is not so much a question, as I see it, based on the studies that have been discussed with me, that people are putting wrong information in as there is more complete information that is not being put in the system.

Then, making sure that information on action taken—record action taken—is properly entered in the system so that it is out—if it should be out, it is not——

Mr. **Schumer**. As you may know, I have been interested in this area for over a year and the basic problem is the States don't have the resources. If you have the option of hiring a program keypuncher to update your information or hiring a cop or a parole officer or a corrections officer or a court clerk, States make the choice for those latter four rather than the first one.

My frustration, basically, is I have tried to come up with a legislative proposal—it is embodied in H.R. 933—which would deal with this problem of accuracy before it gets worse. It certainly would make the claim to expand the NCIC system and make everybody look a little more favorably at it, and yet, I haven't gotten any positive help from the FBI, from the Justice Department.

I have from the States. At times, I even wonder if I am not getting some covert lack of help. What I would like to do is first get your opinion in writing to me, which we can submit to the record, of H.R. 933; and second, I would like to meet with you, Mr. Director, and talk this problem over. It is a very serious problem

I have approached and talked to people in the FBI and the APB with completely clear motives. I know that when people talk about information, they say, "Well, it will be used as a tool to do something we don't want." Each side talks about that and I tried to tread a straight and narrow path in terms of just trying to get accurate and complete information at the State and Federal levels because I am very upset about the crime problem. In my studies of the crime problem, a lot of these verbal remedies don't work and this really would have tremendous bang for the buck.

I get the feeling I am being stonewalled. I must tell you, I have been very disappointed in the response so far.

Mr. **Webster**. I would be glad to discuss it with you.

Mr. **Schumer**. I appreciate that.

Mr. **Webster**. We may be causing some problems indirectly by our effort to decentralize our records, which I thought was responsive to the declared views of members of this committee, and by doing that, by pushing it back out into the States, we may be aggravating their problems.

Mr. **Schumer**. Well, I think my bill deals with that problem as well as the accuracy problem. Again, I appreciate your gratiousness to sit down and talk to me about it and finally get some kind of opinion on whether the bill is good or could be improved or is no good. At least I want to know where I stand instead of just bouncing from place to place.

Mr. **Webster**. Fair enough.

Mr. **Schumer**. Thank you.

Mr. **Edwards**. Mr. Kastenmeier.

Mr. **Kastenmeier**. Mr. Chairman, thank you.

Judge Webster, to return to the activity of the Bureau with respect to counterintelligence and Central America, I would like to explore with you where you get your direction, that is to say, your tasking, for using resources in this connection? Can you let us know? Does this come from the White House? Does it come from the National Security Council or——

Mr. **Webster**. Yes. We have our overall responsibility for the collection of foreign counterintelligence, which is set forth in the Executive Order. I think it is Executive Order No. 12333—yes, Executive Order No. 12333, and in that same order, we are authorized to collect certain kinds of positive intelligence when requested to do so by the Director of Central Intelligence or the National Security Council.

We can, of course, as a byproduct of our counterintelligence investigation, share any positive intelligence that might come our way while we were conducting a legitimate counterintelligence investigation.

From time to time, we will receive requests from the Director of Central Intelligence or the National Security Council expressing an interest in knowing if certain kinds of activities are taking place, or seeking to get bits and pieces of information about certain kinds of military activity that may be taking place that affect our national security about which our sources of information may be able to shed some light.

That is generally it, plus the nature of our—the manner in which we conduct foreign counterintelligence activities is laid out in the Attorney General's foreign intelligence guidelines and our ability to use certain sensitive techniques, such as electronic surveillance, is controlled by the Foreign Intelligence Surveillance Act.

Mr. **Kastenmeier**. But quite apart from nonspecific, general instructions, you are given additional missions or direction from the National Security Council or the Director of Central Intelligence?

Mr. **Webster**. That is correct.

Mr. **Kastenmeier**. Those communications, I take it, are specific and are confidential, is that correct?

Mr. **Webster**. That is correct.

Mr. **Kastenmeier**. They are not a matter of public record?

Mr. **Webster**. That is correct.

Mr. **Kastenmeier**. I say this because it may be that those who are inclined to take you to task for some things may be missing the source of the direction. That is to say, the President of the United States has a position with respect to Central America, and particularly Nicaragua, which, if implemented through the National Security Council and the Director of Central Intelligence, appears to be different than the position which many, I believe a vast majority, of the Congress has, and we have seen presidents use instrumentalities of the executive branch to forward their own points of view with respect to foreign policy in the past.

Now, 11 years ago, 12 years ago, President Nixon used certain devices inappropriately. In fact, that was perhaps part of his undoing. But, in any event, whether or not one agrees with what the Bureau may be doing in its foreign counterintelligence program, the direction and tasking for that suggests higher accountability and perhaps the American people and this committee should take note of it.

I thank you.

Mr. **Edwards**. Judge Webster, you know of the interest that the subcommittee, and indeed, the Judiciary Committee has with regard to the expansion of the NCIC and we know of the plans being made for a review of the various proposals and so forth. What is your timing on that? When do you expect to start making concrete recommendations?

Mr. **Webster**. Are you referring to the Economic Crime Index or?

Mr. **Edwards**. That is the first step, yes.

Mr. **Webster**. I don't have a timetable on it, Mr. Chairman, because it has gone through a number of stages through the Advisory Policy Board and so on. It has been debated and discussed and the proposal is working its way through my office now and it requires my approval, which I have not yet given in its present form. I think that before I do so, we will have explored more fully alternatives to the use of the NCIC system as a means of collecting this type of investigative information.

There is a real policy question involved that I haven't been ready to make a decision on. That is whether control over dissemination is adequate protection for collection of this type of information, and the extent to which such files may be reshaping the purpose of the NCIC system. So I want to see what alternative approaches there are.

Clearly, we need something like this in the law enforcement community, but whether it is NCIC or some other means of sharing information is the issue that I think has not really been convincingly presented to me.

Mr. **Edwards**. Well, Judge Webster, I appreciate the fact that you realize the seriousness of the proposal. It is a very radical proposal and the implications are deeply disturbing unless it is done appropriately. You are talking about putting into this national computerized telecommunications system the names of people who have never been convicted of a crime, but who might be, and there is talk about their associates. So if you have got a bank director under investigation in San Jose, CA, does that mean that the other board members, as associates, are going to be entered into the computer?

What kind of crime is this new file to cover: bank fraud; securities fraud; money laundering; fraud against the government; bribery of public officials; financial crimes? You can just go on almost indefinitely. What standards are going to be used? Do these people have to be suspected of a crime? Is it probable cause or is it reasonable suspicion?

I have already mentioned that the file will include associates and the possibility of the other bank directors being included, but I think you put your finger on one of the crucial worry points, and that is, who has access and how do you prevent inappropriate access? A short time ago, Jay Paul, a detective in the Los Angeles Police Department took his home computer and used it to transfer unverified reports—this is investigative information, the same kind we are talking about—from the data files of the LAPD and sent the information to Western Goals, a political organization in Virginia.

So it is really very serious. We want to be a part of the process. As a matter of fact, we insist on being a part of the process. It is just very, very important for us.

Also, you know, who is going to be able to get access? Is the ordinary street policeman in San Jose, CA going to have access to this delicate information?

Then, apparently, you have plans to enlarge the mission of the III. That is something we want to be a part of, too. In the letter that you sent us on Monday, you outlined a number of other proposals involving the III. Under the proposals, an inquiry to III would result in an automatic inquiry to the Wanted Persons and Missing Persons Files; state that the individual is a firearms offender or a violent offender, if either is the case; state the parole or probation status of the subject; notify the appropriate authorities if the subject of the query is on work release or waiting sentence; and notify the U.S. marshals if the subject is in the Witness Security Program.

This is quite a change in the mission of the III and it does constitute the framework of a national tracking system. If we are going to have that, we ought to examine it very carefully and Congress ought to be a part of the decisionmaking.

Mr. **Webster**. As the chairman has noted, a number of proposals have been under consideration and I think that while not all of them will be ultimately adopted, it does reflect an effort on the part of the Advisory Board to plan ahead, to see to what extent this extremely useful service can be appropriately—I underscore the word "appropriately"—adapted to other needs in the law enforcement community.

It is not a data bank, as such, in the sense the III merely alerts one law enforcement agency that another law enforcement agency has a similar interest in a particular subject matter, which provides an occasion for the two law enforcement agencies to discuss the matter without the central file collecting that data or maintaining it.

Those are efforts to accommodate privacy interests and, at the same time, be sure that we are not letting things drop between chairs that ought not to be dropped between chairs. Examples in the letter, I know, have to do with better protecting the local citizens where we are using the Witness Security Program and a protected witness with an alias begins to go sour, as they will do from time to time because they weren't angels when they were brought into this system.

Those, I think, are positive and productive uses. We have potentially a foreign counterintelligence interest that may be adaptable here and we do welcome your concerns. I think it is healthy for us not to look at the computer as some great new toy that we can do anything we want with. At the same time, as you know, I don't subscribe to the view that inefficiency is the handmaiden of civil rights. I don't think that has to be the case at all.

Mr. **Edwards**. Well, I appreciate those observations, Judge Webster, but again I would point out that this subcommittee, and indeed, the Judiciary Committee, have supported the III and the pointer system and helped to make funds available for it, but this is a departure from the pointer system. More information than pointing is involved and it should be examined with great care.

Mr. **Webster**. I agree.

Mr. **Edwards**. Counsel, do you have any questions?

Mr. **Kiko**. If I may.

Mr. **Edwards**. Sure.

Mr. **Kiko**. I just have one question. In your testimony, you noted the decrease in terrorist activity in the United States and I just have one brief question. Do you attribute any of this to the change in domestic security guidelines, better investigative techniques or better surveillance techniques, or is that something that you can comment on?

Mr. **Webster**. I would comment on it if I could. I think that the new guidelines have not been in place long enough to draw any firm conclusions about that. I think our ability to maintain certain low monitoring levels assures us a better informant base. The analytical capability that we now have that we did not have 5 or 6 years ago combined with a greater certitude about our authority to conduct domestic security investigations means that we have a better chance of getting there before the bomb goes off.

As I mentioned, we prevented nine terrorist incidents last year. We hope we will do as well this year. Without any radical encroachment on anybody's individual liberties, I think that the concept of investigating terrorist groups as criminal enterprises under the current Smith guidelines makes a great deal of sense in terms of training people on how to do it and actually doing it and doing it according to law.

Mr. **Kiko**. Mr. Chairman, I have no further questions.

Mr. **Edwards**. Mr. Conyers.

Mr. **Conyers**. Thank you, Mr. Chairman.

Judge Webster, I just want to ask you to carefully consider the need to include ethnic and racial violence statistics in the FBI crime index. You know, it is a sad day when we talk about mechanical and technical difficulties and questions on intent and all that. Good Lord, we are trying to get away from this past of racist activity and religious bigotry and there is a big statement that goes out when the head of the FBI says, "Look, it is not that easy, Conyers."

We have got to get a handle on this stuff. I mean, there is no way we can keep telling the Congress year after year that this is so tough that we just can't collect it. I had somebody from the Department of Justice give us the ultimate writeoff, "Collect it out of the newspapers," as if a southern town is going to run a bigotry item in its newspaper for us to go clip it.

We have really got to address the problem of racial polarization. From what I can tell, it is getting worse, but I don't have any statistics. We have to call in people from around the country and ask them, "What is your impression in your State and what is your impression in your organization?"

Now, if we have a Federal Bureau of Investigation for anything, it looks like that kind of protection, of just knowing where the violations are occurring, ought to be a source of great concern and we ought to repair this problem. In relation to all the other things we have talked to today, I am talking about something incredibly small in your whole panorama of responsibilities.

Mr. **Webster**. I realize it is of great concern to you, and of course, I think that the figures that come out of the UCR reports are—while they are sometimes a little dated, they are very helpful in understanding the crime picture in the United States and what that crime picture suggests in terms of increased violence. We monitor other factors of age and ethnic characteristics of crime and if we could give you that information, I would certainly support it. I will go back and have another look and see if there is some way we can suggest it, if not through the UCR, perhaps through one of the sampling techniques that the Justice Department has been experimenting with in addition to the UCR.

But we simply are responding as honestly as we know how, based on our experience with 16,000 law enforcement agencies, on the difficulty of getting this kind of information. We did have the same problem with respect to arson 6 or 7 years ago. We were able to work it out. We don't know how successful that workout has been. We are just now beginning to get figures that will tell us whether we were able to deal with arson as a matter for statistical gathering, but I think we should—in view of your interest, I think we should look at it to see to what extent we could gather this kind of information. You might not think it was sufficient. You might not think we were getting enough. But we—if we can do it consistent with the principle of maintaining the integrity of the system, where we eliminate as much as possible human error in the compilation of these figures, then I certainly don't want to rule it out and I certainly don't want you to have the impression that the FBI is stiff arming you in a deeply felt concern here.

Mr. **Conyers**. Well, let me thank you. If that is encouragement, I am encouraged, but it is not just for me that we get the statistics or for the Congress. For God's sake, law enforcement people at the Federal and State and local level need to know these things, too. Our Human Rights Commissions, our Community Relations Commission and the Justice Department need to know them.

So it is not a personal thing that I am seeking here. We have got big problems, racially, in this country. People tell us we are sliding back, that the civil rights progress is now eroding away, and I am counting on you to at least let us be able to count the incidents. That doesn't even address what we do with them, but it does indicate that these kinds of violations are important enough for us to keep track of them as we keep track of a lot of fairly ordinary crimes.

Now, one other thing. You know, these 16,000 law enforcement officials—God bless them all—all of them don't want you or me to know all the violations that are going on in terms of racial and religious violence. They are not all delighted to report from their jurisdictions that somebody just firebombed a synagogue and that a black family just got a cross burned on their lawn and that a woman was assaulted at a plant because of racial or religious reasons. Nobody is eager to let everybody know that, and I know that the FBI crime statistics have been improving over the years. God knows, there was no integrity in them for a lot of years. It was garbage in-garbage out; we took what they gave us and couldn't do anything differently. I think they have been improved.

They still aren't all-virtuous statistics that come in. Nobody has that illusion. We know that you are constantly working on that, but for goodness sake, if we don't keep track of a person being racially or religiously assaulted, what am I going to tell my constituents that it is really important that we have all this machinery out here for.

You are asking for more money, more manpower and telling me at the same time that we haven't figured out a way to keep track of who is attacking whom in our society because of racial and religious reasons. It is not what you are saying, but it is the impression that is being given, that this still doesn't have enough importance for us to upgrade it.

Mr. **Webster**. We certainly think it has importance and, of course, we keep very careful records in civil rights areas where criminal charges are brought based upon deprivation of civil rights for racial, religious or other impermissible motives. We do that—as you know, we have the investigative responsibility there, whether it is police brutality or some other form of civil rights violation.

I think the problem we have to work out—and we certainly can't do it this morning, though we ought to keep trying to do it—is to try to define what it is that you think if the police officer on the beat—there are not just 16,000—16,000 agencies—I don't know how many million police officers we have involved who have to fill out these reports—can readily understand and make an intelligent judgment. You have a cross burning; we know that that is pretty easy to identify. When we have a fistfight or some other altercation, does a multiracial situation create a racial crime, or is it just two people being mad at each other? Those are the things that we need a little help in defining what it is that you would want us to ask our police officers to identify.

Mr. **Conyers**. Well——

Mr. **Webster**. We can do it——

Mr. **Conyers**. I have some confidence in local police. I am not asking that they have their intelligence quotients raised and I know that there are close questions and I am not trying to include all of those in, but good Lord, we have got to start somewhere. There are enough obvious cases to record without us worrying about the borderline cases.

I just want to start with a statement at the Federal level that these attacks and these assaults and these conspiracies are important enough to be logged into the official Federal crime index, sir.

Thank you very much.

Mr. **Edwards**. I appreciate, also, the fact, Judge Webster, that you are going to take a look at it. I am sure your technical people are going to say it is not possible, but perhaps it is possible to make a start or to have a test run or something. It is a serious problem in this country. The message is not getting out that there should be racial reconciliation. We have hundreds of thousands of new immigrants, many of which have landed in California, with all kinds of discrimination against them and hostilities and problems—housing shortages and unemployment and welfare problems—all of which can lead to more racial incidents and we really don't know where we are. So I appreciate that.

If you don't mind a few more minutes, we have a couple of more questions——

Mr. **Webster**. Surely.

Mr. **Edwards** [continuing]. From Mr. Dempsey.

Mr. **Dempsey**. Director Webster, the FBI authorization request mentions the creation of something referred to as the Cybernetics Integrated Investigative Information System, which, as described in the proposal, would integrate the FBI's existing computerized intelligence and investigative systems, the OSIS, ISIS and some of the other investigative files.

If you are familiar with this proposal, could you explain what this integrated system would entail.

Mr. **Webster**. I am sorry, could you give me the question itself?

Mr. **Dempsey**. The question is, could you explain what this integrated system would entail?

Mr. **Webster**. Well, I am probably not the right person to answer that question, but the purpose is really to see what we have, to be able to analyize what kind of information we have from these various sources and to be able to put it together. Beyond that, I would really prefer either to provide another witness or to answer for the record. It is just too technical a subject, but it is designed to know what we have and to be sure that we are using it in a proper way.

Mr. **Dempsey**. I think we are probably having some people from the Technical Services Division next week and can perhaps ask them the question.

Mr. **Webster**. Fine.

Mr. **Dempsey**. Turning to another related issue, the Bureau recently entered into an interagency agreement with the Department of Justice and the four bank regulatory agencies on bank fraud investigations. Was this agreement based on any analysis of bank failures that have occurred over the past number of years and the types of misconduct that may have contributed to them? That is, is the agreement keyed to the types of misconduct that may have occurred in some of these bank failures?

Mr. **Webster**. I believe that it was, yes.

Mr. **Dempsey**. Was that an analysis that was done by the Bureau or by the Department?

Mr. **Webster**. Well, to the extent that we call it an analysis, the obvious factgathering was done substantially by the Department itself, with assistance from the Bureau. What we were attempting to address was either a laxity, a slowness, or an inability to provide—not an inability, but an unawareness of what was necessary to provide the law enforcement investigative agencies in a timely and complete way so that we could do our work.

The forms of information coming in were not coming in sufficiently complete form or consistent patterns. We weren't able to do any kind of proactive work in identifying problems that were out there, and it was our hope that by getting agreement from the regulatory agencies about giving us information in a timely way that we would be able to move on it and give it to us in a sufficiently complete way that we would be able to move on it.

Mr. **Dempsey**. The question I had was did you look at the types of misconduct on the part of bank insiders and look at what can we do in order to spot those types of misconduct in advance of a bank failure?

Mr. **Webster**. In the sense of gathering the information that we needed looking at specific cases, such as bank failures that resulted from associations with security industries that were making bad loans, matters of that kind, I think the answer is yes.

Mr. **Conyers**. Mr. Chairman.

Mr. **Edwards**. Mr. Conyers.

Mr. **Conyers**. I have got some information now about that Detroiter who was paid a friendly visit by her local FBI in Detroit, Amy Goode. She went to Central America as a part of a Witness for Peace trip in October 1984, and later was visited by a special agent who said that this was "positive intelligence gathering" and that the FBI checked routinely with everybody that goes to Nicaragua.

We also have a case in Utica, MI, Mariana Wells, who went to Nicaragua in June 1984 and Senator Riegle wrote to your office about her.

We also have another Detroiter, Sara Murray, who had the same thing happen to her. The Center for Constitutional Rights has documented at least 20 cases so far.

Amy Goode is a part of the Committee in Solidarity with the People of El Salvador, CISPES, a very active group in the Detroit area. Now, what I need to know is what consitutes "positive intelligence gathering" and whether anybody that is a member of CISPES is automatically suspect or whether everybody that goes to Nicaragua routinely gets visited, as the FBI agent told her?

Mr. **Webster**. I think the most important question is whether anybody who is a member of CISPES is subject to being interviewed and the answer is no. We are not keeping track of the membership of CISPES as such. There are, as in many organizations, a wide range of individuals engaged in that organization, including some in whom we have a legitimate independent foreign counterintelligence interest.

We do not attempt to interview everyone who travels to Nicaragua. It is highly selective. Approximately 100, I am told, out of the thousands that have been coming and going to Nicaragua have been interviewed, and they are interviewed because we believe that that interview would be in furtherance of a foreign counterintelligence interest. It is difficult for me to describe what positive intelligence we wish to collect in an open forum and I can't do that, but it has not to do with their political beliefs, but it has to do with our national security interests.

That person may be possessed of information which they are willing to share with us. It may be that we are trying to run down specific allegations about or information about that particular individual.

Mr. **Conyers**. When Amy Goode's lawyer called the FBI, they didn't persist to want to find out what positive intelligence she had. I mean, that ended it. That is the way we got them off her back.

Now, the other thing you ought to assure the Congress is that agents don't go around misstating the purposes of their visits, which raises this whole issue in the first place.

Mr. **Webster**. We have already taken some steps there.

Mr. **Conyers**. All right. We will be watching this. I think it is a matter of concern, as the chairman has said, that we don't get involved, accidentally or otherwise, at the local FBI level of harassing people who go into Central America for purposes that might be politically contrary to some other stated position here.

Mr. **Webster**. We have no interest in preventing people from going to Nicaragua or making themselves sorry they went to Nicaragua. We do have an interest in carrying out our assigned intelligence responsibility.

Mr. **Conyers**. I am going to tell everybody you said that.

Thank you very much.

Mr. **Edwards**. Thank you.

We will inquire of you by letter, Judge Webster, so that we can compare, and I am sure you are interested in comparing, the number of interviews there have been of Americans who have traveled to other countries, because if the interviews of people traveling to Nicaragua are out of line with, say, Red China or Bulgaria or something like——

Mr. **Conyers**. Russia.

Mr. **Edwards** [continuing]. That, then we ought to take another look at it. You have been very cooperative, as always, and we are very pleased to have you. Thank you very much.

Mr. **Webster**. Thank you, Mr. Chairman.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

FBI AUTHORIZATION REQUEST FOR FISCAL YEAR 1986

WEDNESDAY, APRIL 24, 1985

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, and Conyers.

Staff present: James X. Dempsey, assistant counsel; and Phil Kiko, associate counsel.

Mr. **Edwards.** The subcommittee will come to order.

Today, we are going to continue our hearings with regard to the authorization request for the FBI for fiscal year 1986. We are going to be dealing today with the National Crime Information Center, which is an issue that is of importance to the subcommittee and to the American people generally.

For many years, the Judiciary Committee has supported the authorization requests for the FBI, which always include money for the NCIC. We think that it is a valuable tool and we work with the FBI, police departments, and other agencies that use the NCIC.

However, any national telecommunications computerized system operated by a national police agency must be scrutinized constantly. If it is improperly used, it can be a great threat to the privacy rights and the civil liberties of Americans. It can be used for tracing and for lots of other purposes that would be inappropriate in a democratic society.

So we work with the FBI and with the people that run the NCIC to ensure that it works well.

We welcome the gentleman from Michigan, Mr. Conyers.

Mr. **Conyers.** Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing by television, radio, photography, or other means, in accordance with committee rule 5.

Mr. **Edwards.** Without objection, it is so ordered.

Our first witnesses will testify as a panel—Sheila Jackson Stossier, who is accompanied by her attorney, Mr. Theodore Mars; and to their left, the two lawyers who worked on the New Orleans settlement, Mr. William Quigley and Mr. Thomas Anzelmo.

We welcome all of the witnesses. Ms. Stossier will go first and may proceed.

TESTIMONY OF SHEILA JACKSON STOSSIER, EASTERN AIRLINES FLIGHT ATTENDANT, ACCOMPANIED BY THEODORE A. MARS, JR., ATTORNEY, MARS, MEDO & TETE, NEW ORLEANS, LA; WILLIAM P. QUIGLEY, GENERAL COUNSEL, LOUISIANA CHAPTER, AMERICAN CIVIL LIBERTIES UNION; AND THOMAS P. ANZELMO, ATTORNEY FOR THE CITY OF NEW ORLEANS

Ms. Stossier. My name is Sheila Jackson Stossier, and I'm a flight attendant with Eastern Airlines, based at Washington's National Airport. I have been employed with Eastern since October 9, 1973.

I was falsely arrested while on a routine flight October 28, 1983.

When returning to the United States from a foreign country, it is normal procedure for all crewmembers to clear customs and immigration before continuing on to any U.S. destination.

I was working flight 91, Cancun, Mexico, to New Orleans, LA. When I came before the customs agent, I presented my passport and crew form.

The agent placed my name in the computer, which is normal procedure, and asked if I had ever used the name Shirley. I said, "No; my name is Sheila Jackson Stossier. Jackson is my maiden name. Stossier is my married name. I've been married since 1980. I use both names. My passport, driver's license, and credit cards are in my maiden name."

The agent left and came back with a customs supervisor who asked me to step aside while they processed the rest of the crew. The crew waited for me but were told to go on as I would not be leaving with them.

At this time, I asked for an explanation. I was told there was a warrant for my arrest on a parole violation and I would be sent back to Texas to serve time in prison. I told them that a mistake has been made, I had never been arrested, nor had I committed a crime.

The airport police took me into custody. I was then searched, handcuffed, and taken to a holding cell in Kenner, LA.

I telephoned a friend, John Pritchard of the FBI Special Services Unit, New York City. He spoke to the sheriff at the holding cell and requested that my identification be checked.

When the police officer asked for my Social Security number, phone number, address, and employment, I thought that the information was to be checked to clear me. Later, I found the information was used only for a criminal history. I was also fingerprinted and photographed.

From there, I was taken to another holding cell, where I slept on the floor. There were criminals coming in and out all night long.

I asked one of the police officers if the pictures and fingerprints had come in for me from Texas to clear me. He said they had and I was the one that they were looking for and I should settle down for a long stay.

About 4 a.m., I was transferred again to the Jefferson Parish Correctional Center. I remained there until my release.

Glenda Moss, a New York union representative for Eastern's flight attendants, was told nothing could be done for me.

Finally, one correctional officer, Vanessa Shropshire, decided to help verify my story.

Jefferson Parish Judge Tom McGee authorized my release on a $1,000 bond with a restriction to the State of Louisiana pending court appearance. Eastern Airlines posted the bond, and I was released to an Eastern representative.

I stayed at a hotel while I waited for a court order to allow me to leave the State.

On November 2, 5 days after my arrest, Jefferson Parish Judge Joseph F. Grefer signed the order for me to leave the State.

According to the information I have obtained from the Houston Police Department, the officer in Texas who originally arrested the person who was the real subject of the warrant is unknown, and the charge for which she was arrested was a misdemeanor, not a felony as indicated on the NCIC.

Prior to becoming a flight attendant, I served 8 years in the U.S. Marine Corps, 3 years active duty, 5 years active reserve duty. I received an honorable discharge with the rank of sergeant. I was the first female veteran hired by Eastern Airlines as a flight attendant during the Vietnam era in 1973.

I attended the Texas Southern University School of Journalism, and I've written two books, "The First Airline Guide for Kids" and "The Passenger's Guide to Air Travel."

As I said, prior to this incident, I had never been arrested or suspected of a crime, nor had I ever been in any trouble with any law enforcement agency. Now I have an arrest record. My married name, Stossier, is now listed as an alias.

As a result of this incident, I have suffered from medical difficulties, stress, and inability to sleep, and I have been subjected to rumors and hearsay.

I have listed the identification I had in my possession at the time of the arrest, which was viewed by the customs officials.

I'd like to thank the committee for inviting me to testify. Thank you.

[The statement of Ms. Stossier follows:]

STATEMENT OF SHEILA JACKSON STOSSIER BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

April 24, 1985

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I told them a mistake had been made, and that I have never been arrested nor had I committed a crime.

The airport police took me into custody. I was then searched, handcuffed and taken to a holding cell in Kenner, Louisiana. From here I telephoned a friend, John Pritchard of the Special Services Unit, New York City for help. He spoke to the sheriff at the holding cell and requested that my I.D. be checked.

So when the police officer asked for my social security number, phone number, address, and employment, I thought this information was to be checked to clear me. Later I found this information was only used for a criminal history record. I was also fingerprinted and photographed. From there I was taken to another holding cell where I had to sleep on the floor. I remember criminals coming in and out all night long.

I asked one of the police officers if the pictures and fingerprints came in from Texas to clear me. He said they had and I was the one they were looking for and I should settle down for a long stay.

About 4 a.m. I was transferred again, to the Jefferson Parish Correctional Center. I remained there until my release.

Glenda Moss, a New York union representative for Eastern's flight attendants, was told that nothing could be done for me.

Finally, one correctional officer, Vanessa Shropshire, decided to help verify my story. Jefferson Parish Judge Tom McGee authorized release on a $1,000 bond with a restriction to the State of Louisiana pending court appearance. Eastern Airlines posted the bond and I was released to an Eastern representative. I stayed at a hotel where I waited for a court order that would allow me to leave the State. On November 2, five days after my arrest, Jefferson Parish Judge Joseph F. Grefer signed the order for me to leave the State.

According to the information I have since obtained from the Houston Police Department, the officer in Texas who originally arrested the person who was the real subject of the warrant is unknown and the charge for which she was arrested was a misdemeanor, not a felony as indicated by the NCIC.

Prior to becoming a flight attendant, I served eight years in the United States Marine Corps, 3 years active duty, 5 years active reserve. I received an Honorable Discharge with the rank of Sergeant. I was the first female veteran hired by Eastern Airlines during the Viet Nam Era in 1973. I attended the Texas Southern University School of Journalism and I've written two books, "The First Airline Guide for Kids" and "The Passengers Guide to Air Travel."

As I said, prior to this incident I had never been arrested for or suspected of a crime, nor had I been in trouble with any law enforcement agency. Now I have an arrest record. My married name, Stossier, is now listed as an alias.

As a result of this incident I have suffered from medical difficulties, stress and inability to sleep, and I have been subjected to rumors and hearsay.

I thank the Subcommittee for inviting me to testify.

Identification In Possession at Time of Arrest and Viewed by Customs

1. Passport
2. Eastern ID Card
3. Social Security Card
4. U.S. Government Driver's License
5. Disabled American Veterans ID
6. Veteran's Patient ID Card
7. Bank Card
8. Checks (Bank)
9. Eastern Medical Insurance Identification Card
10. International Certificates of Vaccination
11. Various Credit Cards

Mr. **Edwards**. Thank you very much, Ms. Stossier.

We will have some questions a little bit later, but we do appreciate your coming here, and we sympathize deeply with you for your ordeal. It must have been simply horrible, coming right out of the blue.

The next member of the panel to testify is Mr. William P. Quigley.

Mr. Quigley is general counsel, Louisiana Chapter, ACLU.

Mr. **Quigley**. Thank you.

My name is William Quigley, and, as you indicated, I am appearing in my capacity as general counsel for the Louisiana Chapter of the American Civil Liberties Union.

I am here today to speak about how the ACLU in Louisiana, through its cooperating attorneys, Steven Scheckman, Mark Goldstein, and myself, worked hand in hand with the gentleman on my left, Thomas Anzelmo, to improve the computer system used by the New Orleans Police Department and about 20 other local law enforcement agencies.

We filed a Federal civil rights class action against the city of New Orleans and several other law enforcement agencies asking the Federal court to order improvements in the computer system which, we allege in our suit, cause hundreds of wrongful arrests based on inaccurate, outdated, or misused information in the police computers in the New Orleans metropolitan area.

Our decision to file a systematic challenge to the use of the law enforcement computer came only after we had been contacted by numbers of citizens in our area who had been victimized and falsely arrested as a result of errors and wrongful use of the metropolitan New Orleans computer system.

My first experience with the problem came with a woman by the name of Shirley Jones, whom I have known for about 9 years and who lives in one of the housing developments in New Orleans.

Ms. Jones has several children of her own, but when her sister had a nervous breakdown, her sister left five children who were unattended. Ms. Jones went ahead and took those children into her home in addition to her own children and, as part of the process, had to make an application for foster parent status with the Department of Health in Louisiana.

Part of that process was that she had to submit to a computer check to see if she had any arrests or convictions in her past, and she agreed because she knew she didn't have any problem.

The day after she agreed to this check, she was at her home in the afternoon in New Orleans, and two police officers came to her home and asked to speak to a Vera Davis.

She indicated that there was nobody by that name in her apartment, and they insisted that she identify herself. She did. She told them that her name was Shirley Jones, and the police officers informed her then that she was under arrest, that she had outstanding forgery and theft charges against her that had been outstanding since 1978 in the suburban parish of Jefferson Parish, which is right outside of New Orleans.

She protested to the officers that she was innocent, this was a mistake, but they said they were just doing their job, put her in the car, brought her to the central lockup in New Orleans, where she was booked, fingerprinted, photographed, and her name was entered into the police computer as Shirley Jones, an alias of a woman by the name of Vera Davis.

She spent 8 or 9 hours in the New Orleans jail before being transferred to the suburban jail across the river, where she was again fingerprinted, photographed, and again information was entered into the computer. She spent another 10 hours in that jail before she had an opportunity to go before a magistrate.

She was lucky enough to find the one black magistrate in Jefferson Parish that sympathized with her plight as a black woman, and she was released on her own recognizance.

She then contacted my office to see if I could assist in finding out what the problem was. I contacted the sheriff's department and told them that I knew the woman, and I tried to find out information about it.

They were insistent and adamant that the person that had been arrested was in fact the person being sought, but after I went through a few levels of the bureaucracy, it became apparent that there were significant differences between the person who was arrested and the one who was being sought. In fact, the Shirley Jones who was arrested was only wanted because Shirley Jones was one of about a dozen aliases used by a woman by the name of Vera Davis.

When they checked the information, they found that indeed she was a black woman but that her birth date was a different month, a different date, and a different year, and that the person who was being sought was 6 inches shorter and about 70 pounds lighter than the person that had been arrested.

Despite this, the sheriff's department refused to go ahead and drop the charges and forced the matter to a preliminary hearing.

At the preliminary hearing, the judge heard the evidence and agreed to drop the charges, but the detective stopped my client, Shirley Jones, on the way out of the courtroom and said something to her which indicated to us that there was a systematic problem.

He leaned over to Ms. Jones, and he said, "My advice to you, Ms. Jones, is that you had better go out and change your name, because you have too common a name, and the way the computers are run around here, you're just going to keep getting arrested and rearrested."

We went ahead and filed a damage action for Ms. Jones, and as a result of the publicity that her case generated, my office and the American Civil Liberties Union was contacted by literally scores of people who had similar stories.

We found that it happens frequently in the lower income areas of the city. It happens more frequently in the minority areas of the city, and I think it is part of a systematic problem.

In looking at these various cases—and I didn't go into all of them in the statement, but I can provide more information if the committee wants—seeing that there were different problems that were resulting in the same thing—wrongful arrest of innocent people—the problems that we saw revolved around several issues.

First of all, there is not any required training for persons who add, delete, or view information on the criminal history computer.

We found that the larger agencies—the New Orleans Police Department that has in excess of 900 officers and many, many more support personnel—they have a section of trained, experienced, and full-time people who deal with their computer.

We found, however, that other agencies, including traffic courts, municipal courts, juvenile courts, and the smaller agencies, had people who really didn't have very much training at all in how this information was to be used, and they really didn't have much of a commitment to keeping the information up to date—that they only responded to the degree that they were forced to or the degree that their workload allowed them to do so in their particular agency.

We found that in the smaller agencies, which do have a high volume of people coming through them—and, again, most often poor people, most often minorities, most often the people who ended up being falsely arrested in other times—the person who is in charge in these smaller agencies was often overworked and undertrained for the job that they had.

The second problem that we noticed in our conversations was that there was no systematic attempt to keep track of the mistakes, so that over the period of 1 year you could isolate and see that, well, it looks like 40 percent of the wrongful arrests in this past year are coming from traffic court; therefore, we need to go over there and sit on those people, make sure they get trained, make sure that they find out what is going on.

We understand there are always going to be mistakes, but it seemed to us that maybe they were mistakes they were repeating and maybe they were mistakes that could have been prevented.

We also found that there was no individual identification number either for viewing, adding, or deleting information in the computer, and that was important because of another problem that we found, that there was widespread, illegal viewing of criminal history information.

It is our experience that at least any lawyer in the New Orleans area could find out what a person was wanted for, what their rapsheet was, what their criminal history information was, without securing either the permission of the person who was the subject of the inquiry or without making any formal application through a law enforcement agency; that through knowing somebody in the district attorney's office, or knowing somebody that works at the terminal in the sheriff's department, or a traffic court, or one of these other places, they could summon up the information and find out what was going on on the basis of a good old boy network, if you will.

We also found that there was no concrete, definite system for validating and updating information. People were having to go get drivers' licenses and vehicle inspection stickers, and they were being stopped repeatedly when the computer would show that they still owed, they were due in traffic court, or they forgot to pay this ticket, or they didn't pay their taxes for this, where people were actually carrying around receipts when they would go to get their car inspected, because they knew from the last year or the year before that they had this problem again and again, and they didn't know how to deal with it. So they would just carry around the receipt showing that they had, in fact, paid for it, and they would be able to negotiate out something with the people who were running the different agencies at that time.

The final problem that we found is, as I said, really the logical result of all the other problems, and that is that the patrolmen and the patrolwomen, or the deputies for the Sheriff's Department, had a lack of confidence in the validity of the information that was contained in the computer, and, therefore, if a person matched up generally, they would say, "Well, you know how the computer is. There are problems here and there. I'll just go ahead and take a leap and say that's the person, and we'll go ahead and arrest him." That was the experience of the deputy in Jefferson Parish.

When I pointed out the discrepancies in the system between the person who was being sought and the person who was arrested, he said, "Well, you know, it's close to the same month, and it's only 1 year off; then that's pretty close." He wasn't joking, and he wasn't trying to be smart. That was the way he viewed the accuracy of the information in the computer.

Once we had isolated what we figured were the problems, we fashioned the Federal class action that I mentioned earlier. Our intent was to deal with a lack of accountability in the viewing, adding, and deleting of information. We viewed it as a systems problem, and we sought systematic sources of accountability.

We realized that expense was a problem. So we were trying to minimize any additional cost on the part of law enforcement agencies, but we tried to build in some new systems of accountability and checking.

As a caveat here, when we talked with our experts about it, we realized that no one was ever going to make an error-free information system, and we don't think that we have done that, certainly.

We also realized that outside experts, and the ACLU, and computer professors are not going to be able to substitute their judgment for the judgment of the law enforcement people who have to make very important decisions on a daily basis.

However, what we tried to do was to build in systems so that they could make their decisions with the greatest amount of information available and with the greatest amount of training, so that they would be able to evaluate the information that was available.

We were very fortunate in that the New Orleans Police Department recognized that there were problems. We did not engage in finger pointing and saying this was your problem versus this was Jefferson Parish's problem, or St. Barnard, or St. Charles Parish.

The New Orleans system is such that the physical possession of the main computer is actually in the city of New Orleans, and there are a number of other agencies—about 20—that sign user agreements to be able to have access to that information and to be able to add and delete in their own jurisdiction.

The months of negotiations that we undertook between our experts and their experts in face-to-face meetings provided the outline to the consent decree which I have submitted to the committee.

The elements of that consent decree are the important thing, and I would like to briefly outline it.

First of all, we realized that the strength or weaknesses of the system depend on each of its links, and we made the conditions that we are going to outline here a part of the user's agreement that each one of the law enforcement agencies in this network had to sign off and agree to comply with in order to have access to this information. That was done by executing what is called a supplemental user's agreement, and it includes all the following information.

First of all is that each agency agree to a systematic cleaning and updating of outstanding warrant information every 6 months. Some were doing that; some weren't doing that. But this established at least a benchmark, a starting point, where information could be validated.

As I said earlier, some of the problems were very stale. There was information on the computer that had gone back several years. At least this way, it would cut it down to several months.

The second element is that there is a commitment to initial training of everyone who has the ability to view, add, or delete information from the computer.

The people who actually have the responsibility for entering and erasing information from the computer are very few in number, but, as I said earlier, there is quite a large number of people who have the legal ability to summon up information and to view information that is on the computer.

An additional part of the training is that there would be an annual update or recertification, that people recognize that there are Federal and State laws and State and Federal regulations that govern this information, and that they would be made aware of it.

We found, when our experts looked at it, that there really was good Federal and State law regarding privacy and security of information, but it was, by and large, ignored because it was unknown by the online operators.

The people at the top of the big agencies were familiar with the requirements and had a working knowledge of what the various statutes and regulations required. However, the online operator, and the people in the field, and the various police offices really didn't know about this and weren't familiar with it.

So we have made a couple of changes to try and reacquaint people with that—first of all, that there would be bound copies of the laws in physical proximity to every terminal; and, second, that there would be warnings on the terminals themselves telling people that use of the computer involves issues of Federal and State law that people had better be aware of before they do anything.

Another element is that each agency has now agreed to keep an annual review of the mistakes and revisions that may have been made over the years to evaluate it, to see if they need to make changes in their supervisory program, if they need to make changes in discipline, or they need to make changes in software or hardware, to check out if there are trends or patterns or one particular person or agency is responsible for an inordinate amount of problems.

The other improvement that we agreed to was the individual identification number. Our experts call it an audit trail, and they say it is used very frequently in business.

Our experts that we use are experts in the way that the business community utilizes computer information. They demand accountability; they demand to know who makes mistakes if they are made, so that they can deal with the people who have made the mistakes; they realize that there is a cost in money and in people when mistakes are made as a result of an information system.

The things that we are talking about here are basically trying to put into place some of the accountability systems that are used in business management.

The individual identification number means that anybody who calls your record up or adds or deletes information has to leave their signature on the change or the viewing.

Prior to that, each agency had an individual number and each terminal, but beyond that, you couldn't tell who really made the mistake, who was the person that said, "Go pick this woman up," who was the person that entered the incorrect information in the beginning, or who was the person that called my police record up when they didn't have any permission.

The other improvement that we made was on the idea of illegal viewing. In the past, anyone could call up anybody's criminal history information, take a look at it, shut the computer off, and there's no record kept that even your information was looked at.

Under the new system, the New Orleans Police Department has agreed to keep track of the individual identification numbers and the requests that are made so that if, in fact, you find out that someone was wrongfully terminated or some sort of illegal viewing happened, and you're not sure who did it, then you can go back and find out by checking this information.

We had experiences of young men who had been unemployed for a long time who went out to get their first job in many months and were interviewed one day and supposed to start work the next day. When they got to work, they were met by sheriff's deputies who said, "You're under arrest, because you're wanted for armed robbery," brought over, spent 12 hours in jail before they find out that, in fact, it was the same name but a different person.

Now, his employer called somebody in the system and said, "Look, I have a Kenneth Taylor coming to work tomorrow; run his name, and see what you have." That is an illegal act without the permission of the person or without at least giving them the information that this is going to happen.

But there was no way for us to be able to go and find out who pulled that name and then find out from them who made the request, because prior to now, there was no individual identification number.

Finally, there is an annual certification that the agencies are in compliance with the consent decree, and there is going to be, again, training of the people on the street so that they can be kept abreast of the kind and quality of the information that is in the computer so that they can have access to that, and they can know, for example, because they can summon up height, weight, last known address, social security number, and the rest to make an independent evaluation of whether they are arresting the wrong person or not.

So those are the sort of systems that we put in place, and I have, as I said earlier, submitted a copy of the consent decree to the committee.

Mr. **Edwards**. Thank you, Mr. Quigley.

All of the material you have submitted will be made a part of the record.

[The statement of Mr. Quigley follows:]

STATEMENT SUBMITTED BY WILLIAM P. QUIGLEY

My name is William P. Quigley. I am a private attorney in New Orleans, Louisiana and I also serve as general counsel to the Louisiana Chapter of the American Civil Liberties Union.

I am here today to speak about how the ACLU in Louisiana, through its cooperating Attorneys, Steven Scheckman, Mark Goldstein, and myself, worked to improve the computer system used by the New Orleans Police Department and about 20 other local law enforcement agencies.

We filed a federal, civil rights, class action against the City of New Orleans and several other local law enforcement agencies asking the court to order improvements in their computer system which, our suit alleges, caused hundreds of wrongful arrests based on inaccurate, outdated or misused information in the police computers.

Our decision to file a systematic challenge to the use of the law enforcement computer in our community came only after we had been contacted by numbers of citizens who had been victimized and falsely arrested as a result of errors and wrongful use of the New Orleans Police Department Computer System.

The first example of the systematic problem I experienced was with Ms. Shirley Jones. Ms. Jones had made an application to the State Department of Health to see if she could be given foster parent status for five of her nieces and nephews because her sister had had a nervous breakdown and was unable to take care of these children. As a condition of being certified as a foster parent, Ms. Jones was required to submit to a police computer check. She agreed.

On the day after her interview with the State Department of Health, two members of the New Orleans Police Department arrived at her home after lunch and asked for a Vera Davis. Ms. Jones said that there was no one there by that name, but the officers insisted that she identify herself and she did so. The police officers then informed here that she was under arrest on theft and forgery charges that had been outstanding in an adjoining suburban parish since 1978, four years earlier. She protested that she knew nothing about the matter but her protests were ignored.

Ms. Jones was handcuffed and brought to the Orleans Parish lock-up where she was booked, fingerprinted and photographed. Her name and local address were programmed into the New Orleans Police Department computer. After about nine hours in detention she was transferred to the other parish where she spent another ten hours awaiting an appearance before a magistrate. She was again booked fingerprinted, and photographed and again that information was entered into the computer.

Once she was finally brought before a magistrate she was released on her own recognizance and shortly thereafter contacted my office.

I contacted the Jefferson Parish Sheriff's Department, Detective Division, and was told that Ms. Jones was arrested as a result of an outstanding warrant for a Vera Davis who used about a dozen aliases including the name Shirley Jones. When I asked to check the information that they had in the computer on Vera Davis, I found that the person being sought was born on a different year and a different day and a different month than the Shirley Jones that I knew and, in fact, was six inches shorter and about 70 pounds lighter than Shirley Jones.

Despite this, the Sheriff's Office refused to drop the charges and forced this matter to a preliminary hearing.

At the preliminary hearing a detective from the Jefferson Parish Sheriff's Office vigorously interrogated Ms. Jones and after the Judge was convinced that the wrong person had been arrested, the charges were dropped. The detective then gave Ms. Jones some advice which I know Ms. Jones will never forget. This detective leaned over to Ms. Jones and suggested to her that she should change her name because the way that the computers were programmed she would just keep getting arrested again and again because she had such a common name.

In later litigation it was discovered that the person named Vera Davis who was actually being sought was in fact in jail in Orleans Parish at the time that Shirley Jones was picked up for allegedly being Vera Davis.

After we filed suit for damages for Ms. Jones, there was a good deal of publicity and I was contacted by a number of other individuals who had similar problems.

It was becoming obvious that these were not isolated mistakes but evidenced a break-down in the system.

The problems seemed to revolve around the following issues:

1) There is no required training for persons who add, delete, or view information on the Police Department computer. The large Police Departments usually have a well staffed and trained group of people who do their work for them. However, our experience shows that the smaller agencies like traffic courts, juvenile courts, and municipal courts often have only one person whose responsibility is to keep up with the computer work. This person is often overworked and undertrained and usually is well behind in keeping the information up to date.

2) There was no systematic attempt to keep track of mistakes so that the Police Department could target the area where most mistakes were coming from. Additionally, the only sort of information that was available in the computer identified the agency where the information was generated from and the terminal. There was no use of an individual identification number so that the person who was responsible for entering or failing to delete information could be held accountable.

3) We found that there was no system for updating and validating information on computer systems. There were many experiences of people who went to get license plates, drivers licenses, and vehicle inspection stickers who were told that there were outstanding traffic tickets or parking tickets that were years old. The drivers were having to carry around receipts showing that they paid for traffic tickets because the information reflecting unpaid tickets was allowed to remain on the computer without correction and update, and there was no system to update or validate that information.

4) We found that there was wide-spread illegal viewing of criminal information. Any lawyer in New Orleans could call up the Police Department, a friend in the District Attorney's Office, someone who worked at the jail, someone who worked at juvenile court, or someone who worked at the clerk's office in criminal court and could find out the criminal history information available on any person.

5) The final problem is really the logical result of all of the problems I have already mentioned. That is, that the police officer on the street had little or no confidence in the accuracy of the information in the computer. Conversations with patrol men and women showed that they expected the computer information to be off by a certain percentage and therefore if an identification was relatively close to the one

in the computer, they would go ahead and arrest the suspect and figure that the computer just contained incorrect information and this would be all sorted out later.

Once we had isolated what we thought were the problems, we began to fashion the federal class action suit that I mentioned earlier. Our intent was to deal with the lack of accountability in the viewing, adding and deleting of information in the local computer. We viewed it as a systems problem and sought systematic sources of accountability, or ways for the problems to feed back into the system so that they could be acknowledged, isolated, and addressed.

We have never been under any illusion that we would be able to stop the problems with the computer. However, we wanted to minimize the problems, and we wanted to make sure that the problems of 1985 and the proceeding years were dealt with because our experts assured us that the problems of 1986 and 1987 will be ones that we have not even thought of.

After we filed the suit we were able to retain two very good experts who worked to assist us with the suit. Dr. Johnette Hassel and Dr. Marc Barnard assisted us in working to formulate some strategies for installing systems of accountability.

We got the Police Department to produce documentation of how their system worked and we arranged face to face meetings between our experts and the people in charge of the NCIC Division of the New Orleans Police Department.

We were very fortunate in that the attorneys for the New Orleans Police Department recognized that there was a problem and agreed to engage in extended nogotiations to try and resolve the matter so that improvements could be made that would benefit everyone.

Our negotiations enabled us to understand that the New Orleans Police Department computer was in fact the central computer in a system that was used by about 20 different agencies in the New Orleans area. Although the City of New Orleans actually had the physical possession of the computer, each agency had a separate user's agreement with the City of New Orleans which allowed it independence in viewing, adding, and deleting informatin in its jurisdiction. Therefore, the police in New Orleans could not delete any information that they did not add but every agency had the ability to view any of the information that was on the computer.

After months of negotiation we came to a consent decree which I have already provided to the staff of this committee. I would like to briefly outline the elements of that consent decree:

1) Recognizing that the strength or weakness of any system depended on every one of its links, the parties agreed that not only would the New Orleans Police Department enter into a consent decree but that they would make compliance with this consent decree a condition for use of the information in their computer. This was done by executing a supplemental user's agreement between the New Orleans

Police Department and each of the other 20 agencies which ahd access to that information. This supplemental user's agreement includes all the following infomation:

a) Every agency agreed to a systematic cleaning and updating of outstanding arrests warrants at least twice a year.

b) There is to be initial training of all personnel in every agency who have the ability to add, delete or view any information on the computer. As you well know, the number of persons in the law enforcement agency who have the ability to add or delete information is usually kept small. However, almost anybody in the law enforcement agency has the ability to view the information by going to one of the terminals. We felt that initial training of all personnel regarding the privacy and security laws was very important. An additional part of this training component was that each agency agreed to an annual update and annual reiteration of the laws and regulations regarding computer security and privacy of all of its personnel. We felt that this annual update would be important to keep reminding people of their responsibility under the law.

c) We found that there was good Federal and State Law on privacy and accountability and integrity of information. We found that these laws were by and large ignored because they were unknown. Some of the top people in the largest law enforcement agencies were aware of the law and tried to follow it. However, most of the online operators were unaware of the existence of the law and dertainly most of the people who were just viewing information were unfamiliar with the laws. Therefore, we required that every terminal actually have physical access to a bound copy of the State and Federal laws regarding pirvacy and security of computer information. Additionally, we borrowed from the Surgeon General and required that each terminal have prominently displayed on it a warning that use of that information in that computer involved issues of Federal and State Law and that the information can only be released to authorized criminal justice agencies.

d) Each agency agreed to start keeping records of revisions and mistakes that were found in its computer generated information. Each agency agreed to an annual review of these mistakes and revisions so that it could see if there were any trends or patterns so that there might be opportunities for improvements of supervision training or programming within the agency.

e) Another important point was the institution of an individual identification number. Our experts call this an audit-trail. This audit-trail makes the person who adds, deletes, or views information take individual responsibility and essentially leave his or her signature on the computer record itself. This allows the system to find out who made a mistake and work with them to prevent further mistakes.

f) The New Orleans Police Department agreed to keep records of each viewing so that if a person felt that they were wrongfully terminated or wrongfully arrested after an improper viewing of criminal history information, they would be able to go back with a court order and find out who actually viewed their criminal history information and gave that information to whoever took the action.

g) The agencies agreed to a retraining of all personnel on the street. This is not a long, involved retraining but basically an attempt to familiarize the police officers with the applicable law and regulations as well as the sort of information that is contained within the computer and is available to personnel on the street to verify whether they have the right person or not.

h) Each agency agreed to promptly verify any information that was available when arrest was made based on a warrant which is outstanding in the computer.

i) Each agency agreed to an annual certification that it had complied with this consent decree.

We have no illusions that the consent decree will solve all the problems. We do hope, and it is the opinion of our experts, that these new systems of accountability will enable the individual law enforcement agencies to better monitor and improve and hopefully solve the problems themselves.

Law enforcement agencies were very reluctant to allow any computer or any computer expert to substitute some sort of system for the probable cause determination that goes on when each arrest is made. This case does not substitute the judgment of anyone or the individual police officer. It does, however, hopefully upgrade the information that is available to the individual and provide some additional training so that the arresting officer may better know what is available and how it can be verified.

If you have any questions or would like us to provide any additionaly documentation I will be glad to do that either this time or upon a later request. Thank you.

Mr. EDWARDS. The last member of the panel to testify is Mr. Thomas P. Anzelmo, who represented the city of New Orleans.

Mr. ANZELMO. Mr. Chairman and members of the committee, again, my name is Tom Anzelmo. I'm one of the law partners in the law firm of McGlinchey, Stafford, Mintz, Cellini and Lang in New Orleans.

We were retained to represent the city in the class action that Mr. Quigley—Bill—has made reference to.

The problem was being called to the city's attention in that there was some frequency in the number of people who were charged and who later said that they were erroneously charged based upon either misinformation in the computer system or a misapplication of the information that was there.

When the suit was received, we immediately met with the superintendent of police and his policy planning people, as well as people in records and identification and data systems to discuss the allegations of the lawsuit, and to discuss the particular cases that had arisen in the past, and to see whether in fact we had a systems problem or whether we had a people problem.

The final analysis indicated to us that the Motion system, which the city of New Orleans employed—Motion is an acronym for the Metropolitan on-line system that we have. The system serves several of the adjoining parishes, and it also provides computer information to various State, local, and Federal agencies concerning local crimes or local criminal history records.

We also work with the Federal system in that we have access to an NCIC terminal, which of course is the subject of this particular inquiry.

The city, after these meetings, decided that, in the context of this particular lawsuit, it would be best, as opposed to going through the normal battles concerning discovery and fighting through a lawsuit, that it would be in the best interests of all, because we were all working toward one goal, to have a coherent, and efficient, and accurate system for the delivery of criminal history information to those agencies who were authorized to receive it.

We examined the particular facts of the Shirley Jones case, and it pointed out to us rather graphically that the system itself was, more often than not, not the particular problem. It was the utilization of the information that was generated by the computer system, whether it be an NCIC system or whether it be a local system as we have.

The case in point, Shirley Jones' case—the city of New Orleans received a teletype from an adjoining parish informing us there was a warrant for the arrest of a person who used the name Shirley Jones.

The information generated to us by teletype, not by computer, said please arrest a particular individual with a particular date of birth at a particular address.

The officers, acting pursuant to information from a sister agency that there was a warrant valid on its face, proceeded to arrest Shirley Jones, and thereafter she went into the criminal justice system, and, though it was a time-consuming process for her, eventually she was, in fact, vindicated of the particular charge for which she was arrested.

Mr. **Edwards**. When the officers arrested her, did they check the birth date?

Mr. **Anzelmo**. The birth date that was on the teletype was her birth date. The officer who had, in fact, generated the warrant went to the judge for the presentation of the warrant for Ms. Shirley Jones gave that judge the real—the friendly Shirley Jones' birthday. He put her birthday on it; he didn't put the birthday of Vera Davis. He put Shirley Jones' real birthday.

So when the officers went to arrest Shirley Jones, they had her actual birthday; they had her address because she had given the authorities her address when she made the application for the——

Mr. **Edwards**. The teletype that came in from the other parish—it had a birth date on it?

Mr. **Anzelmo**. It had Mr. Quigley's client's actual birth date on it. It didn't have Vera Davis' birthday.

So our officers, as is so often the case, received information which was valid on its face as a result of someone else either misidentifying someone or making an actual mistake, and that's why I say you get into the question of, do you have a systems problem, or do you have an individual or a people problem?

Whether it be systems or people, it usually results in someone's rights being affected, usually detrimentally, because they are stopped, they are detained, and they are questioned.

For the purposes of the city and in the context of the Federal lawsuit, our review of the jurisprudence concerning what was valid and what was invalid led us to believe that we were proceeding in a manner that was calculated not to deprive someone of their constitutional rights and was, in fact, sanctioned by decisions of the Supreme Court insofar as questions and stops based upon probable cause, especially when there's a valid warrant.

But as we all recognize, there were individuals who were being charged with crimes where, in some cases, there were basic similarities either through names or similarities because of names, and ages, and weights, that was resulting in the wrong person being apprehended.

One of the basic tenets that the police department and the other police agencies that we were working with had to deal with is that when you are dealing with a true criminal element, in fact, they will attempt to deceive you. They will give you misinformation concerning their identities, and this, more often than not, causes an officer on the street to be more than suspicious when he receives information via his communications or his computer system that he has an individual who is pretty close in relative ages, or heights, or weights to the individual who was charged.

The case in point that helped us make a determination in other cases that we defend was the Supreme Court decision of *Baker* v. *McCollum* that was decided in June 1979.

In that particular case, we had two Mr. McCollums; they were brothers. One brother took the other brother's driver's license and substituted his picture. He then went out and committed some criminal acts, and when he was booked, he gave them his driver's license, which had all the personal history of his brother, but it had his picture on it. So they booked him, and they released him on bail.

Then he didn't show up for his bail hearing, and eventually the good brother gets stopped for a traffic infraction, and they run his name through the computer, and in fact it has his name, his correct date of birth, his weight, his height, and he is detained for a period of 3 days.

Those are the problems that are going to be confronted by police agencies.

So what the city decided to do, in cooperation with Mr. Quigley, was to see how we could make the system that we had operate more effectively with the people who were using it.

Bill has enumerated some of the system changes that were made to help in the proper delivery of accurate information both to police and police agencies but also to help the public have a little more confidence that, when they were stopped, the information that was available to the particular officers was correct.

The most, I guess, pertinent thing to the city was that we would be able to maintain the security of the system, and keeping the confidentiality of the system, but producing a meaningful work product that officers on the street or other individuals who were receiving or requesting the information had.

So the goal for the city was to make sure that the people who were going to be using the information would receive additional training, that they would also be informed that there are certain identifiers or certain bits of information that can be received from the computer to aid them in particular stops or particular questioning that they are going to make.

The goal has to be, from the city's point of view and as a custodian of criminal history information, that the information that we have is correct and that in the transmission of the information to whoever is going to use it is done in a proper fashion and then, once those people get it, that they know what to do with it, and that they have sufficient identifiers that they can make the one-to-one relationship that is necessary to make an accurate arrest, to eliminate as best as possible those arrests of individuals who were not the person actually being sought.

I have prepared some written comments that I would just ask the committee to make a part of the record. They, in effect, summarize what I have said here today, and if the committee has any questions, I would be glad to answer them.

Mr. **Edwards**. Thank you. They will be made a part of the record, without objection.

[The statement of Mr. Anzelmo follows:]

House Judiciary Subcommittee
on Civil and Constitutional Rights
Statement of Thomas P. Anzelmo, Esq.
April 23, 1985

Mr. Chairman and members of the committee:

My name is Thomas P. Anzelmo. I am a partner in the lawfirm of McGlinchey, Stafford, Mintz, Cellini & Lang located in New Orleans, Louisiana. Our firm was retained to represent the City of New Orleans in Civil Action No. 83-705, entitled: Shirley Jones, individually and on behalf of others similarly situated v. the City of New Orleans, Superintendent Henry Morris, Parish of Jefferson, Sheriff Harry Lee, certain unknown Police Sheriff Deputies and/or Computer Programers. This Civil Action was brought before the United States District Court for the Eastern District of Louisiana.

This federal class action sought declaratory and injunctive relief to address problems in law enforcement computer systems used by the New Orleans Police Department and other user agencies that allegedly resulted in the wrongful, detention, arrest and incarceration of numerous people in New Orleans and Jefferson Parishes.

The City of New Orleans maintains and operates a computerized criminal justice information system known as "Motion". Motion is an acronym for the Metropolitan New Orleans Total Information On-Line Network. The system is the link between the city's computer and members of the criminal justice community. The primary objective of the system is to provide users with essential, accurate information in a timely manner. The information stored in the Motion files includes warrant/want data, vehicle registrations, probation and parole status, arrest/conviction data and criminal characteristics.

Participants in the Motion system include all local state and federal components of the criminal justice system in the Parishes of Orleans, Jefferson, St. Bernard, St. Tammany, Plaquemines and St. Charles.

The records maintained in the Motion system are confidential. Upon receipt of the aforementioned lawsuit, a meeting was convened with the Superintendent of Police and representatives of Records and Identification, Research and Planning and Data Systems divisions of the New Orleans Police Department. It was the goal of the city, acting through its police department, to better serve the public through the operation and maintenance of an efficient and accurate criminal justice records system. The city's approach was to balance the public's need to preserve and maintain the confidentiality of the records without detracting or diminishing the effectiveness or the availability of accurate and timely information to members of the criminal justice community.

It was within these parameters that the city made a concerted effort to meet with the representatives of the plaintiffs within the context of the lawsuit. The city opted to forego the more formalized discovery methods allowable under the Federal Rules of Civil Procedure in favor of a less structured series of meetings. The city made available at these meetings the Commanders of those divisions charged with the compilation, storage and dissemination of criminal justice information. We allowed them to be questioned by experts retained by the plaintiffs in a round table discussion. It was the city's belief that these types of meetings would significantly reduce the time necessary to come to an understanding of the techincal operations of the Motion program.

The city's basic position was that the Motion system per se was not the cause of the problems being experienced by individuals such as Shirley Jones. Problems such as experienced by Ms. Jones were attributable to the use of the information provided by the Motion system. When problems were being experienced, the information actually provided by the Motion system was correct, but was not being interpreted in a proper fashion. Additionally, problems were also being experienced by the public which were attributable to warrants left outstanding in the computer by user agencies of the Motion program.

The City of New Orleans, prior to the institution of the Shirley Jones lawsuit, had an ongoing evaluative program to help reduce the problems being experienced by the community. The actual Consent Decree was the product of a series of meetings between the representatives of the City and plaintiff's counsel. It was essential to the City that the security of the system not be compromised or so burdened that it became ineffective or inefficient. Many provisions of the Decree have memorialized actual practices of the New Orleans Police Department as well as adding additional requirements. These new requirements were added to help insure the accuracy and viability of information received from users of the system. Many users of the Motion system have the capacity to place information directly into the system itself. This information, frequently in the form of arrest warrants, will remain within the system until the warrant is satisfied or removed. Through the utilization of a supplemental user's agreement, each member of the criminal justice system subscribing to Motion, agrees to participate in a systematic cleaning and updating of outstanding arrest warrants. These users have also agreed, along with the New Orleans Police Department, to increase the educational information available to individuals who have access to the system. Through the use of additional training, all users will ackowledge the need for confidentiality and correctness of the information available in this system.

The significance of this Consent Decree is that both the interests of law enforcement and the public will better be served. The public will have additional confidence that the information generated by the Motion system is accurate and current. The interests of the criminal justice community and the general public are better served through the knowledge that the confidentiality of these records will be maintained and the security of the system will remain intact. The criminal justice community and the public are also better served through the operation of systems such as Motion. It is essential that these records be maintained as an important tool in the smooth operation of an effective criminal justice system.

I appreciate the opportunity on behalf of the City of New Orleans to address this committee and provide an insight as to the considerations given by a member of the criminal justice system which operates a criminal justice information system. If there are any questions which the members of the committee have, I will be more than pleased to answer them.

Mr. **Edwards**. The gentleman from Michigan, Mr. Conyers.

Mr. **Conyers**. Thank you, Mr. Chairman.

I appreciate this hearing. I think it is very important that you called it, and I certainly sympathize with the witness, Ms. Stossier.

Ladies and gentlemen of the panel, it seems like blacks are most often wrongfully arrested in this NCIC business. Is that a fair conclusion?

Mr. **Quigley**. I would say it is fair.

Based on our experience with the ACLU in Louisiana, it is most often the members of lower income and minority communities who are wrongfully arrested.

It's our experience that this does happen to the white community, the affluent community, but the relationships between the police and different communities are obviously very different, and in a black, or minority, or low-income community, the police officer is much—in our experience, again—is much more likely to go ahead and arrest and let somebody else figure it out rather than stand there, take the time, and try and get additional information, and negotiate out a solution which might happen in a different environment.

Our experience is, absolutely, there are more low-income and more minority people falsely arrested than otherwise.

Mr. **Conyers**. What do you think, Counsel?

Mr. **Mars**. Well, sir, that may be the case in many instances——

Mr. **Edwards**. Will each witness sort of pull over the mike, please? It will help us. Thank you.

Mr. **Mars**. That may be the case, and I'm representing Mrs. Stossier in the civil action. That may be the case quite frequently.

However, when we have a lady who is dressed in an Eastern flight attendant's uniform who is passing Customs with the rest of the Eastern flightcrew, who has a valid passport, who had an identification card from her previous service in the Marine Reserves with her fingerprint on it, when that could have been easily verified with the Houston Police Department, I don't know if it's necessarily in her case a minority situation.

Mr. **Conyers**. Well, what is it?

Mr. **Mars**. And one thing——

Mr. **Conyers**. Well, wait a minute. What do you think it is if it isn't because she was black then? Because she had on an Eastern Airlines uniform?

Mr. **Mars**. No.

Ms. **Stossier**. It was a black customs agent that stopped me.

Mr. **Conyers**. OK.

Ms. **Stossier**. The name came up, and they just pulled me aside.

Mr. **Conyers**. So you think this was a systems problem in your case?

Ms. **Stossier**. A systems problem in my case—exactly.

Mr. **Conyers**. But what about after we got past the agent and the immediate asking you to step aside?

Ms. **Stossier**. That's different.

Mr. **Conyers**. What was different about that?

Ms. **Stossier**. Then I would think it became a racial thing.

Mr. **Conyers**. What made you think that?

Ms. **Stossier**. Because they refused to verify any of my identification, and I requested several times with several different officers to verify my identification with Eastern, with the Houston Police Department, and they refused; they outright refused.

When John Pritchard, the FBI agent in New York, telephoned and requested that they do so, they totally ignored his request.

Mr. **Mars**. One of the very interesting points was, on the very date that the warrant was issued in Houston, Mrs. Stossier passed through Customs in New Orleans, and her passport was stamped on that very day.

Ms. **Stossier**. September 13.

Mr. **Anzelmo**. Mr. Conyers, to make a statement for the whole Nation, I can't do that, because I'm not privy to the numbers of arrests or types of arrests that are being made, but from the city of New Orleans point of view, the system is going to be generating names based upon inquiries that are made.

The computer itself is not going to make a determination as to whether that person is black or white. The name, if it is in the system with an outstanding warrant, is going to come back, and then at that point in time, whoever has made the inquiry will then make a determination as to whether that is, or is not, the person who is being charged.

In the city of New Orleans, which has demographically almost a 50-50 population split of black and white, I can say at least 50 percent of the time when those checks are going to be made, they are going to be black individuals involved.

But our police department itself is increasing in its numbers of blacks, and, in fact, it's a colorblind situation, or should be, that when the information is received, if there is a valid warrant outstanding, or if there is some inquiry that has to be made, then that person is going to be checked out.

Mr. **Conyers**. So you are assuring me the system is color free—the computer is not a discriminatory machine?

Mr. **Anzelmo**. It can't be.

Mr. **Conyers**. So it's an equal opportunity employer?

Mr. **Anzelmo**. Because whether you are black or white, if you have committed an offense and there's a warrant issued for your arrest——

Mr. **Conyers**. Then there's no mechanism built in for the machine to decide it is going to discriminate against a person on the basis of color or religion.

Mr. **Anzelmo**. No.

Mr. **Conyers**. OK.

Well, what about all the people operating it?

Mr. **Anzelmo**. Again, from an operations point of view, when a request is made, a terminal operator will run want on warrants on a particular individual.

If the name comes back with the other physical identifiers, that is then communicated to the individual on the street who has the person face to face and who then has to make a determination based upon the information that they received whether that is, in fact, the person that is being wanted.

Again, from the terminal operator's viewpoint, it should be a color-blind situation, because if it doesn't match, that information is going to be communicated.

Mr. **Conyers**. OK. Well, I feel pretty naive this morning.

Now, the system is colorblind, and now the people are to be colorblind.

Mr. **Anzelmo**. Well, the system for sure is colorblind. The individuals on the street—I can't comment as to whether or not they have——

Mr. **Conyers**. Certainly not the police, you can't comment for——

Mr. **Anzelmo**. I can't comment for any individual police officers; no, sir, I can't.

Mr. **Conyers**. OK.

Well, how come—and I'm just asking this—the only three people I ever heard of that were nailed by NCIC—and I have been told there are hundreds, probably thousands—is Sheila Stossier, who happens to be black; Shirley Jones just happens to be black; Terry Rogan in Saginaw, whose case has been dug up by the staff, has been arrested five times so far; he just happens to be black.

Ms. **Stossier**. There's a Ron Gudrow in Boston who was traveling with us.

Mr. **Conyers**. He happens to be black?

Ms. **Stossier**. No; Ron Gudrow is Italian.

Mr. **Conyers**. He is what?

Ms. **Stossier**. Italian.

Mr. **Conyers**. Oh, he's Italian.

Mr. **Anzelmo**. We have had another case in our jurisdiction which was a white individual, a lady from I believe it was Florida—the same type of thing.

Mr. **Conyers**. Well, this is very, very coincidental; or is it?

Mr. **Anzelmo**. Well, the lady is white, but the last case that I'm referring to that you don't have before you—that lady was a white individual.

Mr. **Conyers**. Now, didn't you tell me, sir, that it was the people and not the system that was creating the problem?

Mr. **Anzelmo**. It's the application of the information that they receive which, more often than not, causes the problem. Either it's someone who puts information in improperly or misinterprets the information that they receive.

Ms. **Stossier**. Mr. Conyers, I feel that with my situation it was a people problem, because this person was arrested January 9, 1979. I received my passport May 16, 1980.

Now, if a person has been tried and convicted of a felony and is on parole, they can't get a passport. I had a new passport, so when I walked through—and I had a 1980 passport—they should have realized I was not that person.

Mr. **Conyers**. What kind of computers are used in NCIC? What brand, or are there different brands? Nobody knows?

Mr. **Anzelmo**. The New Orleans system is an IBM.

Mr. **Conyers**. Well, OK. It looks like there is a lot of coincidence going on here this morning in the NCIC system.

How do we correct this? I mean, do we have to bring 49 other class action suits in the rest of the several States, or should we talk to the Director of the FBI or the head of the NCIC program, or should we go back to the earlier system? Before NCIC, we were using something else. Maybe that would be better. What do you think?

Mr. **Quigley**. You know, we are talking about a systematic problem. The question is whether you are calling the people a system.

I think that when people are involved, you still have a systematic problem. The question is whether it is the machines or the people, and I think when you have hundreds and, in the case of the NCIC, tens and hundreds of thousands of people using something, those people constitute a system, and I think that that system needs to be upgraded and improved just the same way as the New Orleans area.

It is the experience of our computer people that upgrading and validating and creating new accountability systems is a constant process in business, in private industry.

Private industry, again, realizes there is a cost for each mistake; they realize that there is a cost in money and a cost in people; and I think the New Orleans experience is that the law enforcement agencies are starting to understand that as well and trying to do something about the cost.

Certainly the way the people relate, the way the people are trained, the way the people are supervised, the way the people are disciplined—all of those are systems, and those systems need to be upgraded so that the Saginaw experience is not the same as New Orleans, so that New Orleans' experience is not the same as North Carolina or Los Angeles.

Since Ms. Jackson and myself were on the 20/20 program that focused on this, I have received inquiries from attorneys all over the country that had similar problems, and it is not an isolated thing, but it is a systems problem and the way that people use information, the way that they are disciplined for misuse of information, and I think that perhaps some of the systems that our experts started on might be at least a starting point to look at that.

You have access to many more resources than we have, but I think it very clearly is a people problem, but that does not exclude the opportunity for a systems problem.

As you are well aware, our experience in Louisiana is that race and money are in every system, and every system has a race consciousness to it and a money consciousness to it.

As an attorney in the criminal justice system, the criminal justice system reflects race and money in a more graphic and stark way than almost any of the other systems, because the penalties are so high and people's lives are so seriously impinged upon, and the computer operating in this area certainly has to take cognizance that race and money are the way that the people operate.

We can't stamp it out perhaps right now, but we can certainly figure out systems to combat that, systems of training, supervising, education, accountability, and the like, and that we have to do that, or else we're just going to continue with harassment that's reaching an ever higher level to people in low-income and minority communities.

Mr. **Conyers**. Thank you very much.

Mr. **Edwards**. Mr. Kastenmeier.

Mr. **Kastenmeier**. Thank you, Mr. Chairman.

Perhaps this question is redundant. It follows on what Mr. Conyers asked. Essentially, Mr. Quigley, what are we really to learn from this experience?

I gather we are to learn from your perspective as the lawyer who has been involved in this and also, in a more general sense, as a counsel to the Louisiana chapter of the ACLU, that we can live with these crime computers if we make sure that certain precautions are taken with respect to personnel and practices similar to those that you have obtained as a result of a consent decree?

Is that the lesson we are learning, that we need that? Or are there not others who advocate that it isn't worth it; the computer systems are intrinsically too difficult to manage insofar as they affect other people with respect to the sensitive area of rights in terms of crime?

What lesson do we learn from your experience?

Mr. **Quigley**. We never addressed the issue of whether or not there would be a computer system, because that was a given in our situation, and I'm not really, I guess, the person to ask that question of.

The message of our experience is that there are problems, there are victims, and there are people whose lives have been seriously disrupted because of a system that is out there.

But the message also that we have is that the system can be improved and that people can work cooperatively in a way that does not unduly restrict the legitimate authority of law enforcement people to investigate, prosecute, and arrest criminals, that even saying that we're not going to restrict that, and we're going to keep that there, that the system can be improved to minimize the number of victims.

In addition to finding that it can be improved, our experience at least at this point is that there is not a tremendous financial price tag on that.

The cost that we are talking about is not—you know, we are not talking about sending every policeman somewhere to learn how to do something. We are talking about integrating some new training into the training that police officers receive now, the training that a policewoman would receive in order to be assigned a duty in a crime-ridden area.

I think those are the three lessons. There are victims, and it's not isolated to any one particular area; second, that there can be improvement if you bring law enforcement, people who are interested in the Constitution, and people who are experts in the area of information management together, that improvements can be made, and it doesn't have to have a big price tag on it.

We found particular assistance from our experts who are outside of the area of law enforcement. They did not speak necessarily in the same terms that the police department did, but they are experts who are consultants to major corporations and to major data systems groups in information accountability, in efficiency and accountability, and supervisory training.

They were able to take the sort of themes that have been creatively developed by the private sector and apply them in the public sector and still maintain the integrity of the law enforcement agency itself.

Mr. **Kastenmeier**. As you say, you entered into this after the fact, but if a city, county, or State were newly considering the installation of a system such as this, you would not advise against their doing it, I take it; you would advise them, in the light of your experience, to exercise certain precautions as you have just listed. Is that correct?

Mr. **Quigley**. I honestly don't know. I haven't really thought about the absence of a system like this and going back to the old days. I know in the old days, there was plenty of race consciousness in the way discretion was used. I know that income was a significant determinator in who was arrested and who wasn't.

I would say, anybody who is doing it ought to look seriously at the way it is done, because I'm sure there are ways that it can be done that are worse than just operating without.

My experience is that everybody has it now as a result of the NCIC. Every district attorney's office, even the smallest little traffic court has a computer hookup with the major metropolitan crime information computer, and the question about repealing that is one that I'm not really ready to address.

But certainly, if they are going to do it, it should be done wisely, and in light of the kind of development that private business has brought us to in 1985, because our computer experts assured us that no matter what we do in 1985, there are going to be new problems in 1986, 1987, and 1988, and that, rather than addressing the specific problem, we have to build in systems of accountability so that the problems of 1986 can come to the fore, can be looked at, evaluated, and adjustments can be made that will allow them to do their job and allow the Constitution to be protected, and upgrading the integrity of the information-management system.

Mr. **Kastenmeier**. Briefly, one last question.

I notice, by implication, you are suggesting that indeed the systems may have some advantages, as I think you indicated in your response to Mr. Conyers, that they do not contain personal biases, per se, or at least a system should be designed not to have that.

Therefore, the information should be objective insofar as it does not discriminate on a face-to-face or personal basis. Is that correct? Do you see some redeeming aspects of a computer system in terms of identification?

Mr. **Quigley**. Well, my experience and my client's, both of the ACLU and my private practice, and the Legal Defense Fund, and other groups that I work with are predominantly low-income, predominantly minority people, and these people bear the scourge of crime, I think, in a much larger degree than other people.

I know that anything that can help reduce crime is certainly of extreme interest to the people. The problem is that they are in a position where they can't live with it and can't live without it, in a sense. I don't want to overstate "can't live with it," because that may be an overstatement, but they need the protection, but sometimes the protection turns on them, and that's the problem.

Mr. **Mars**. If I might make just an observation, please, believing that the legal profession does such a great service to everyone when we get a very large judgment, it seems that large judgments make agencies pay more attention to what they are doing.

But in Mrs. Stossier's case, it would seem to me, especially when we are dealing with U.S. customs agents, if we could just ask them to apply a little commonsense when they attempt to interpret the information from the computers—a lady who has a valid passport issued after the time of the initial arrest of the party involved—information where she passes through customs on the day that the warrant was issued.

It seems in her case, if just a little commonsense had been applied, this lady would not have been forced to undergo all she did.

Mr. **Kastenmeier**. Thank you, Mr. Chairman.

Mr. **Edwards**. Ms. Stossier, now, you have been arrested, fingerprinted, photographed, and put in jail; is that correct?

Ms. **Stossier**. Yes, sir.

Mr. **Edwards**. And wrongfully so. That has been established definitely, as you so certified and testified.

Now, do you know, has your record been cleared? Is that information still in the computer in the NCIC in Washington?

Ms. **Stossier**. Yes, sir; it is.

Mr. **Edwards**. It's there, isn't it?

Ms. **Stossier**. It's there.

Mr. **Edwards**. Counsel, is that correct?

Mr. **Mars**. Yes.

Mr. **Edwards**. That information is there.

Mr. **Mars**. Yes, sir.

Mr. **Edwards**. So if a name check is made on her in the future by, we'll say, a State agency that has permission to check for arrest and conviction records in the NCIC, her name will come up as having been arrested on—was it a felony?

Mr. **Mars**. Yes.

Mr. **Edwards**. Arrested on an alleged felony. Actually, it was somebody else.

Mr. **Mars**. Right.

Mr. **Edwards**. Have you made an effort to have that record purged?

Mr. **Mars**. Well, sir, part of what the eventual outcome of the litigation will be, hopefully, will be to have this purged, but, as it appears now, there was a legitimate warrant for a Sheila Jackson. This Sheila Jackson now has Sheila Jackson, alias Stossier.

We can expunge Sheila Jackson, alias Stossier, but what about the real Sheila Jackson whose record should not be expunged?

Mrs. Stossier uses the name of Sheila Jackson. So, if she passes customs again and they punch Sheila Jackson, or she goes to apply for a job under Sheila Jackson, the bad Sheila Jackson's record will always come up, and I don't know of any way of having that expunged, and, to be honest with you, I don't want to get the bad Sheila Jackson's record expunged.

Mr. **Edwards**. Well, have you been assured by the FBI or the local police, who made the arrest, and fingerprinted Mrs. Stossier, and photographed her, that that arrest—and that was an arrest and a booking—has been removed from the computer in Washington?

Mr. **Mars**. As of yet, no.

Mr. Edwards. Do you have a letter?

Mr. Mars. That will all be part of what we will, hopefully, accomplish.

Mr. Edwards. In other words, you don't know if it has been done yet?

Mr. Mars. No; I am sure it has not yet been done.

Mr. Edwards. Have you asked that it be done?

Mr. Mars. Not yet, sir; no.

Mr. Edwards. Well, shouldn't it be done automatically when a bad mistake is made like that, resulting in such unfortunate consequences?

Mr. Mars. I think if it were done automatically in the civil context, it might even be an admission of some sort of fault or guilt.

Mr. Edwards. Well, I believe that we have the FBI here tomorrow, and we will be able to ask them that question.

What would happen in your city, in New Orleans, if a false arrest was made—and this was obviously a false arrest—somebody was fingerprinted, and photographed, and so forth, and put into the databank of arrest records in New Orleans, and it was found that it was a mistake?

Mr. Anzelmo. In the particular case in point, what the city of New Orleans did—and I personally handled the defense of Mrs. Jones' personal lawsuit aside from the class action that was brought—is, we brought Mrs. Jones in with the people from Records and Identification; we established beyond a doubt that she was, in fact, the wrong person; and then, with the data systems people and the records and identification people, we had all evidence of that particular arrest and all changes that were made to the computer record of Vera Davis, also known as Shirley Jones, removed from the system.

Part of the inquiry here reveals that different agencies have online capability. Jefferson Parish can increase a jacket or increase a file by encoding information to it. They can't change any of our information that the New Orleans Police Department put in, but they can supplement it.

So in those cases, you work with the adjoining parish and with your own data systems people to remove, or to expunge, or purge that particular information.

Now, there is nothing that is going to take out of the system Vera Davis also known as Shirley Jones, because Vera Davis, the one that the warrant was looking for, uses the name Shirley Jones.

As Mr. Mars pointed out, there are felons or people who are criminals who use aliases, and that's, I guess, an inherent fault, when the alias goes into the system and it's the same name as someone else, that at some point in time, if the two names are compared, you're going to get a positive match.

That's when the results of our consent decree can bear fruit by a process of education and training that the person who receives the information, then looks at the physical identifiers that are present for the person that's being sought and for the person that's in front of them, and then makes the determination whether it is or is not the right person, because you will have people who have the same name and relatively the same dates of birth.

But there will be other physical identifiers that are built into the system—age, weight, height, color of hair, color of eyes, Social Security number, occupation—that, for the person being sought, have been put into the system either as a result of an arrest or as a result of a criminal investigation; that's there. It's a question of that education and training that you need to have these people who use it do it correctly.

That's why, in our view, the city would say, "No, don't do away with your computer system. Just make the people who use it better able to interpret and understand the information that they receive."

I think that's, to a great extent, what the consent decree did. It helped memorialize things that we all recognize would be important in having the proper use of the information that was being generated.

Mr. Conyers. Mr. Chairman.

Mr. Edwards. Can I ask Mr. Quigley one quick question to follow up, and then I will yield to the gentleman from Michigan.

Mr. Quigley, your client was named Shirley Jones?

Mr. Quigley. Correct.

Mr. Edwards. Are you satisfied that the computer in the New Orleans Police Department has expunged all references to her, and if an inquiry is made about this Shirley Jones—your client—something won't come out that points out that she was arrested and perhaps it says by mistake? Are you satisfied of that? Have you tested the computer?

Mr. Quigley. Our experience is that because she was in two different jurisdictions, she had to go to the city of New Orleans police, and, at that time, the New Orleans part of the bad experience was expunged

She then had to go to the Jefferson Parish sheriff's office to be refingerprinted, and then they checked the fingerprints with the person that actually did the physical labor to do it, and then at that time they did remove it.

Yes, she has had that information removed, and I've had it done in other cases as well, but you have to go there, and in most cases you have to be refingerprinted again, and then they check that out with the fingerprints of the person they are looking for, and then an order will be issued at that time to the central information unit, and they will back out all the information that they put in.

New Orleans cannot take out the stuff from Jefferson, nor Jefferson from New Orleans. So if you start bouncing around among jurisdictions, Ms. Jackson has the city of Kenner, she probably has Jefferson Parish because she was in that jail, she has the NCIC because of the customs thing.

So her name is going to be on several different lists, and she is not going to be able to just go to one to have it removed. She is going to have to go to all those different agencies to actually have her information removed.

It's not, one person started it, so one person can stop it, because once you go to a Jefferson Parish jail, then they put you in there, and they cannot take out what customs put in, nor can the city of Kenner take out what the parish put in, and the like.

So she has quite a bit of chasing around to do to try and unravel it.

Mr. **Edwards**. Was this case that caused the trouble in the NCIC—was Vera Davis in the NCIC system?

Mr. **Quigley**. We don't know that.

Mr. **Anzelmo**. As far as we have been able to determine, it was not. It was a local charge. There were no violations of Federal law.

Mr. **Edwards**. And, Mr. Quigley, you are satisfied that if someone makes an inquiry with regard to your client, that the computer will say nothing; it will just be negative, period? Or will it say something about her?

Mr. **Anzelmo**. Bill may not be able to answer that question.

There was information in the system from other incidents involving his client. That won't be removed, but all evidence of this particular incident is gone.

Mr. **Edwards**. Very good.

Mr. Conyers.

Mr. **Conyers**. Thank you, Mr. Chairman.

I think we have agreement that we've got a systems problem caused by so many people.

Now, I am getting an increasing sense of frustration. If these are the people bringing the complaints to the committee's attention, where are we, ladies and gentlemen? What is going to happen?

I mean, I'm back to my earlier question. Do we have to bring 49 other lawsuits in the several States, and is that going to do any good anyway?

I seem to have noted a question about even what your agreement is going to accomplish, Mr. Quigley, and I'd like you to discusss this.

We're here not just to take in grievances. This is not a grievance center. I mean, we're supposed to be solving this with the FBI. and right now I haven't got a solution in the world.

Mr. **Quigley**. My understanding is that there are about 65,000 different agencies that have access to the FBI's computer. My understanding also is that each of those agencies has an agreement with the FBI in order to be able to have access to that information. I may be incorrect, but that's the information that I have.

What we did, because we didn't have all 20 of the agencies in the New Orleans area parties to our suit—the same thing you're talking about. We had two, the two that actually handled Ms. Jones. But we wanted to make sure that the other 20 agencies also complied with this, without having to bring 18 other suits.

So what we did was, we made a requirement that all of these agencies have to follow all the new requirements on training, certification, viewing of information, upgrading, validating information, and the like, as a precondition to having access to the criminal history information system.

In conversations with your staff members, that, I think, is the vehicle that they were talking about in being able to implement a similar arrangement with the agencies that have access to the FBI's computer system.

As a precondition to getting the good stuff, you have to set in place some of these systems to prevent damages as much as possible.

Mr. Conyers. Will you just tell me what the solution is? I appreciate all that. I mean, what do you want us to do?

Mr. Anzelmo. Well, the solution as we saw it is, the city of New Orleans owns the Motion Computer system. Any subscriber to our system now has to abide by the preconditions that were imposed in the consent decree worked out between us.

It's in the best interests of the city to have all subscriber and user agencies follow one particular path and utilize the training.

For a national solution, if you have people subscribing to the NCIC system, if they adopt a user's agreement, and it's placed in that user's agreement that they must follow these certain preconditions or they will not have access to your system, as to the New Orleans local system, either they abide by it or they lose the accessibility to the system.

Mr. Conyers. Have you got a solution, sir?

Mr. Mars. No; I would definitely agree with Mr. Anzelmo.

Mr. Conyers. OK. I close on this, because we have got to go on, but what about the bad faith of cops in this?

We talk about teaching them to read the files correctly and all of that, but in Terry Rogan's case, the Los Angeles police came to Saginaw to arrest him, knowing that they didn't have the right person, refusing to even agree to correct the information in the NCIC file, and the student went to the FBI in Saginaw and told them about his situation—that he was tired of being arrested at gunpoint—and the agent told him that the FBI couldn't do anything about it, that he ought to contact his Congressman.

Maybe that's why I'm interested in solutions, and we've now got a case pending in the Federal court in Los Angeles about this matter.

Clearly, if being black and being poor can get you into this kind of jam a lot more easily, then somebody is doing something in purely bad faith; it's not a matter of misreading.

If she has a Marine discharge card with her fingerprint on it, cops can't be that dumb; OK? So why don't we talk about some kind of real remedy for the wrongdoers, the malfeasers, that are screwing up the system?

Would you say something about that, witnesses?

Mr. Mars. Hopefully, we will do that when we get a nice big judgment against them.

Mr. Conyers. You mean after you do that.

Why don't we do it before?

Mr. Anzelmo. I think that the vehicle is in place now, and that particular vehicle is 42 U.S.C. section 1983. That, in effect, provides that every person who, under color of State law, deprives another of a constitutional right is liable in damages.

But there is Federal legislation on that now, and that's, more likely than not, one of the bases that Mr. Mars is going to proceed on on behalf of his client.

So you have particularized statutes—42 U.S.C. 1981 and so forth—that are going to address individual problems that may not be susceptible of a national consent decree.

Mr. Conyers. Have you ever heard about a case being brought under that title?

Mr. Anzelmo. Yes, sir.

Ms. Shirley Jones' case was originally brought, I think it was under 1983. They occur all the time.

Mr. **Conyers**. All the time?

Do you know how many cases are brought a year under those titles?

Mr. **Anzelmo**. Yes—oh, the number? I can tell you that there are——

Mr. **Conyers**. Do you know how few? And do you know how few people win, if they've got the money to stay in court. Do you realize how difficult it is, in the real legal world, bringing cases under that title?

Mr. **Anzelmo**. From my personal experience?

Mr. **Conyers**. Yes.

Mr. **Anzelmo**. There does not seem to be any problem, either for a person who is aggrieved, to find counsel or to prosecute his case in the U.S. district court in the Eastern District of Louisiana.

Mr. **Conyers**. Well, tell me how many cases. Just in closing—I know we've got to rush—how many cases have you been involved in? You must be involved in more of these cases than any lawyer I've ever met.

All the ones I know about are where the case doesn't get brought, it's lost, you can't prove intent. So how many cases are you talking about, specifically?

Mr. **Anzelmo**. The number of cases—are you asking me about specifically this kind of case or 1983 cases?

Mr. **Conyers**. Any kind of 1983 cases.

Mr. **Anzelmo**. Well, any kind of 1983 case——

Mr. **Conyers**. Any kind.

Mr. **Anzelmo**. In the 11 years that I've been practicing as an attorney, I have handled or helped defend more than 100.

Mr. **Conyers**. More than 100?

Mr. **Anzelmo**. Yes, sir.

Mr. **Conyers**. OK. Could you just send me the list? Would you agree to send me the list, not for the record, but just for me to read through these cases?

And what were the results in about 100 cases?

Mr. **Anzelmo**. Well, it depends.

Mr. **Conyers**. Well, how many were won, and how many were lost?

Mr. **Anzelmo**. I can't give you the statistics right now, because there are various degrees of winning and losing. You have some cases that are dismissed, some cases that are settled, some cases that are tried, won, and lost.

I don't have those particular statistics right now, because I didn't come prepared on that particular topic. I came prepared, and so I have to express my disappointment that I can't give you that information right now.

Mr. **Conyers**. But you can send it to me?

Mr. **Anzelmo**. Yes, sir; I can.

Mr. **Mars**. Mr. Conyers, I do know that one of the judges recently commented that at least 25 percent of the docket in Federal court in New Orleans were under the 1983 act.

Mr. **Edwards**. We are going to have to move along, because we do have another witness, but Mr. Kiko, minority counsel——

Mr. KIKO. I guess I have a question for Mr. Anzelmo and, I guess, Mr. Quigley.

We've been concentrating on the problems associated with this issue. What about the benefits?

Do you have any idea of what the percentage is of these where this wrong information was, as opposed to the correct information?

Mr. ANZELMO. Of lawsuits that were brought, we've had I think five lawsuits that I have personally defended involving the question of two people with similar names—Shirley Jones; Eugene Russell was one that Bill handled; a lady named Linda Lee; Patsy Sue Baker was one. That's four, and I can't remember the fifth.

That's a pretty small percentage of the total number of either false arrests, and I've been in three cases—that I've been associated with.

Mr. KIKO. And that's just five, and they've involved the same types of names. Anything other than that where the wrong information was?

Mr. ANZELMO. I think we've had a few, Bill, where there was a warrant that someone paid a ticket, and it didn't make it on the computer that the ticket was paid, and then a warrant was issued for their arrest. We've had maybe six of those.

Mr. KIKO. And how many people are on those computers? How many arrest records are on the computer that you are associated with?

Mr. ANZELMO. Thousands and thousands, for the Motion file, because Motion takes in Orleans Parish, Jefferson Parish, St. Tammany, St. Charles, Plaquemines, and there are many municipalities and parishes within the Motion system.

Mr. QUIGLEY. The point I would like to make is that there really are hundreds out of thousands.

The reason there are so few suits is what, I think, Congressman Conyers pointed out, that the suits are the best cases. Those are the people who have never been in trouble before. Those are the people with the most outlandish damages.

I am contacted regularly by people who have been stopped, wrongfully detained for a few hours or something like that, but I, unfortunately, have to give them the kind of advice that Congressman Conyers is saying, that there are a lot of people for whom there is no remedy right now. The courts really cannot handle—1983 does not handle every false arrest case.

In the case that was pointed out by Mr. Anzelmo earlier, the Supreme Court said that less than three days, that's not a Federal case, that's just a State case.

That's fine if you're in Orleans Parish and you're a black person; you can look at a black jury; but if you're in a country parish where you've got an almost all white jury and you're a minority or low-income person, it's very hard to find somebody to spend the time to do that.

So there really are a lot of people—an overwhelming number of people don't bring suits, and they just have to lump it. They don't have a remedy the way the law stands today.

Mr. KIKO. I don't have any further questions.

Mr. **Edwards**. Does the system in New Orleans automatically, after a year or two, expunge an arrest record that does not have a conviction record attached to it?

Mr. **Anzelmo**. No.

Mr. **Edwards**. So right there you have, obviously, a lot of innocent people who have records in the computer but, for all you know, it was a mistake, they were found not guilty, or anything could have happened to them.

Mr. **Anzelmo**. The criminal history, if someone is found not guilty, will record that on the system. Those records will be there, but it will show whether the arrest and conviction—it will show the outcome of the particular case and how it was arrived at.

Mr. **Mars**. But the arrest still remains.

Mr. **Anzelmo**. I'm not denying that. The arrest is there.

Mr. **Edwards**. The arrest record remains whether or not, in some other parish, they never brought the person to trial. The naked arrest record remains indefinitely whether or not there is a conviction or a not-guilty finding entered into the computer.

Mr. **Anzelmo**. That's correct.

Mr. **Edwards**. I'm sure that disturbs you as much as it does me.

Mr. **Anzelmo**. From a policy consideration and a records-keeping consideration, I can't comment on that.

Mr. **Edwards**. Well, doesn't that seem awfully unjust?

Mr. **Anzelmo**. I'm not speaking now as someone who represented the city. I'm speaking now on a personal basis, that if I am arrested on a charge that is totally without justification, then I'm going to take steps to have that removed, because I don't want that on my record. That's why at least Louisiana law provides for expungements of your records if you have been arrested.

So I would endeavor to get that off, because I wouldn't want that on my record on a personal level, and that disturbs me, if I still have a record following me around and I didn't do anything.

Mr. **Mars**. But the expungement procedure is very, very cumbersome, and sometimes if you're not an attorney, it's very expensive.

Mr. **Edwards**. Well, you are just splendid witnesses, and we would love to keep you here all day, but the world must go on, and we thank you very much for very valuable testimony.

Mr. **Mars**. We thank you.

Mr. **Anzelmo**. Thank you for inviting us.

Mr. **Edwards**. The last witness today is Prof. Diana R. Gordon, associate professor at City College of the City University of New York.

Professor Gordon, we welcome you.

Will you pull the mike up, and you may proceed.

TESTIMONY OF DIANA R. GORDON, ASSOCIATE PROFESSOR, CITY COLLEGE, CITY UNIVERSITY OF NEW YORK

Ms. **Gordon**. Thank you. I'm delighted to be here.

I teach political science and criminology at City College of New York and I'm also doing my major research this year on criminal history records as a consultant for the Urban Policy Research Institute in Los Angeles. I am here today to talk about the Economic Crime Index, which I think is a very important subject, but I confess to a little bit of frustration, because I could spend my entire time talking about the testimony that has just passed, which is indeed very important.

I have been asked to comment on the implications of the Economic Crime Index proposed as an addition to the 12 NCIC files.

This index—the Economic Crime Index—would contain records on individuals under investigation for white-collar crimes. Each record would include such things as—in addition to the identifiers of the individual—identifying numbers, vehicle information, bank account numbers, names of associates.

Initially the file would be accessible only to the FBI, its field offices, the Department of Justice, and perhaps to other Federal agencies that now have direct access to NCIC, though that is not clear to me. The proposal says only FBI and the Department of Justice would have initial access, but FBI Director Webster's most recent letter to you, I believe, suggests that other Federal agencies that have direct access to NCIC might be able to use the index right away. That's something I think would be good to get clear.

Eventually—and eventually seems to be within 2 years—all 64,000 NCIC users will have access to this file.

I should say at the outset that it's very difficult to know what the ECI proposal is really about, because the documents that have been made publicly available are, at this point, very sketchy, very incomplete.

So I have really more questions than answers, and I will spend most of my time today on them, but I do want to say a little bit about my concerns and values which frame those questions.

First of all, I'd like to say I don't want to denigrate in any way the technical difficulties of mounting good investigations of white-collar crime. I think competent investigation in this area is at least as important as competent investigation of street crime, and we ought to be doing that aggressively.

But I am concerned with problems of the past and present with computerized criminal records, and I think this index is likely—from what we know about it now—to compound those problems.

I'm concerned with the possibility, first, of mistake, the possibility that we've had presented to us here in the previous testimony very eloquently.

The recent wrong warrant lawsuits illustrate that problem, and, by the way, there are others which were not discussed here. There are a number for which complaints have not yet been filed.

But since I started working in the area of criminal history records and the privacy issues connected with criminal records, a number of people have contacted me and have used me as a clearinghouse for telling them who's doing what, and there are suits that will soon be brought in other States.

So the wrong warrant problem is an illustration, of course, of this kind of problem. I should say the problem exists very substantially on the local level in other areas besides New Orleans.

In Los Angeles, a very large case which was settled last summer—the *Gates* case in Los Angeles—dealt just with wrong warrants in the local system. To provide a little more data to Representative Conyers, I should note that there were, I think, 26 named plaintiffs, and I believe all of them were either black or Hispanic. In fact, in that case one man had been arrested on a white man's warrant.

I think there is nothing built into the machines that is discriminatory, but a system is only as good as the people who use it and enter information into it. What inevitably happens is that there are errors at both entry and inquiry points, and the results seem to suggest a discriminatory pattern of outcome if not of intent.

In addition, there are special problems, I think, that might inhere in the ECI similar to the wrong-warrant situation.

The ECI could surely not include fingerprints for every person in the data base. In that respect, it would be like files of outstanding warrants based on other identifiers which can't be reliable, at least not as reliable as the fingerprint.

I'm concerned, for instance, about the situation with respect to credit card fraud, where it may very well be that the file will end up including the names of victims whose cards have been stolen, and the record will then be based on an incorrect identifier, in the same way the *Rogan* case, which you referred to, was based on a name from a wallet that was stolen.

The ECI proposal contemplates expanding access to the 64,000 law enforcement agencies that are now part of the NCIC network, and it seems to me inevitably it will encounter some of the data quality problems of the III—the Interstate Identification Index—which also relies on entries from many sources all over the country.

I would suggest that any file which relies on local standards will have a lot of errors in it. I think Mr. Quigley's testimony provided persuasive evidence of the systematic problems at the local level.

Then, of course, you have the local problems compounded by passing on criminal history records compiled there to the III and the difficulty of removing those records later on.

It's really only recently that NCIC has started to have data quality audits, and they're, I think, not comprehensive—well, for good reasons; it's terribly expensive to verify all those records.

Even if all mistakes could be eliminated, I would argue that we need to regulate these systems very, very closely because of the problems of other kinds of abuse.

There are examples of the kind of abuse that Mr. Quigley spoke of in New Orleans, where unauthorized criminal record checks are made for employment purposes.

There are also examples of people who gain access to rapsheets through law enforcement agencies and then sell them, in one case in California to a private investigator. I have heard of a case in which records were sold to a political campaign but have not looked at that closely.

I don't want to suggest that the FBI and other Federal agencies are not more careful than the local agencies, but I'm not sure of that either.

In recent interviews in two major States, I have been told that Defense Department investigators have attempted to gain access without authorization to State criminal history records, presumably for employment or recruitment purposes.

I noted last week in a New York Times article, emanating from another hearing of this subcommittee, that the Defense Investigative Service may have been conducting its own counterintelligence activities outside surveillance guidelines, and I can imagine that it might be hard for the NCIC to say no to Defense Department requests for access to the ECI.

Then of course, there are the potential problems of abuse of computerized records for the suppression of political dissent or blackmail.

I don't want in any way to suggest that the ECI is being created as a device for political surveillance, but there have been problems in the past both with local police spying and with FBI tracking of dissidents in the 1970's. Inevitably, the portability of these kinds of records poses a great temptation to use them for purposes for which they were not originally intended

Even if there were no mistakes in this kind of file, and even if there were no abuses of it, political or otherwise, I am still very concerned about the general trend toward unregulated expansion of computerized files which may influence criminal investigations and, at some future date, employment investigations.

I think the only point on which I disagree with Mr. Quigley's testimony is that I don't think there is good State and Federal law on these matters, and if I had a single message to send to you, it would be that this subcommittee and the Judiciary Committee must find the political will to mount overall regulation of these kinds of records, which I think is now grossly inadequate.

There is a seemingly unending stream of expansion and combination of files at all governmental levels. Closest to home are no less than five proposals made during 1984 for either expanded access or additional information for NCIC files, not counting the ECI which we are considering today.

The FBI is also proposing a cross-search of three of the NCIC files, effectively a combination of the records, so that any inquiry of any one file would trigger a search of all three.

I'm also concerned because the principal justification for the expansion of these files, and particularly for the addition of the ECI at this point, is coordination and efficiency.

First of all, efficiency should not alone be a goal sufficient to supersede constitutional rights. I think, in fact, these computerized files are often inefficient in achieving the longrun goals.

For example, last summer there was a terrible sexual, child-abuse scandal in New York, and, as a result of that, all day-care workers are now being fingerprinted and their fingerprints checked against State criminal history records and the records of the child-abuse registry at the State level.

What has been found so far, as of the most recent report, which is based on 6,000 fingerprints checked so far?

Although certainly some child-care workers have past records and there are some records for drug offenses and assault, not a single one of the more than 6,000 people whose records have been checked has a conviction of child-abuse of any kind or for any offense involving any child.

Looking at it the other way around, of the seven people arrested last summer, not a single one had a record, so that you could not have found those child-abusers through this system. So I am skeptical about the efficiency of the system.

Having recourse to an Economic Crime Index seems to me a little like doing the criminal-record checks on day-care workers.

It is proposed as a device for coordinating financial crime investigations at a time when, for at least some such crimes, the principal problem seems to be not lack of coordination but inadequate measures taken by the regulatory agencies. Here I would like to make a general point about this whole area.

It seems to me that law enforcement recordkeeping and dissemination by computer becomes a kind of lazy recourse when regulatory activities, which are supposed to stop fraud before it happens, aren't working.

We have the failure to do proper background checks and testing in the New York State, returning to that situation where the records of child-care workers were checked.

When I wrote a little piece about that to the New York Times, I got three letters and calls from people working in the system who said, "It's not surprising that some abuses happen here. We don't really check the backgrounds, in the ordinary way of reference checks, on a systematic basis."

I think you will find, if you look closely at many of these white-collar crime areas, that there is a failure to do careful inspections of records, a failure to maintain a truly vigilant regulatory scheme with respect to some of these kinds of frauds.

I wish to refer to a House Committee on Government Operations report issued 6 months ago on the Federal response to insider fraud leading to bank failures, one of the categories of economic crime for which the ECI is proposed.

The committee found, supporting my hypothesis, that in each of the failures studied, "the appropriate Federal bank regulatory agency had ample advance warning of unsafe and unsound banking practices, particularly insider misconduct, prior to insolvency, but failed to take prompt and effective remedial action."

Concerned that the increase in bank failures reflected a "lack of interest in dealing with insider abuse in a meaningful way," the report urged a fundamental revamping of the banking agencies' role in the fight against insider abuse and fraud, including improvements in investigatory practices, which would be less intrusive than making investigative files widely accessible.

Now I'd like to turn to my questions about the proposed ECI, which I hope will be answered tomorrow, in fact, by Department of Justice officials.

First of all, why specifically is the ECI needed? The justification presented talks about coordination of white-collar crime investigations and cites the limited experience and resources of the investigative agencies that handle financial crimes.

But perhaps more competent financial crime enforcement at the level of the regulatory agency would take care of that. If lack of resources is such a pressing problem, why not restore the budget cuts made last year in the Investigator General staffs of many agencies having criminal investigative jurisdiction as well as the 15-percent cut for white-collar investigators at the FBI?

Second, what evidence is there that in high-priority, financial crime areas the ECI could make a crucial difference in the course of investigation or prosecution?

If proper review by the Comptroller of the Currency would have prevented the fraudulent purchase of the Midland Texas Bank, which led to looting and collapse in 1982, should we not rely on improved oversight by the Comptroller of the Currency?

I have provided in my written testimony a number of examples of situations like that which might have been dealt with by some less drastic measure.

What kinds of crime will be covered by the ECI? The proposal mentions only bank frauds, procurement frauds, and credit card frauds, but economic crime is a very sweeping category.

Will it include investigation of the Government securities dealers, like those that have collapsed within the past few weeks?

Would it include something like investigation of the Boston Bank case, which seems to be expanding and expanding? It may also involve organized crime investigations.

Will it include the sales of bad mortgages, a recently emerging white-collar crime area?

How, and by whom, and with what oversight will decisions about new investigative areas be made?

I am also concerned about the timing of this proposal, and I would like to know from the FBI officials why is it proposed at a time when the 18-month study of the entire NCIC and its design is just being started?

I understand that the FBI is in negotiations with the MITRE Corp. They are trying to define the scope of this study, and last year the proposal for yet another NCIC file to include data on organized crime and terrorist suspects was shelved pending the redesign of the NCIC network after this study was complete.

Is that result not appropriate as a short-term measure, at any rate, for the ECI? And what does it mean that we have a test phase over the next 2 years?

Is it meaningful to speak about a pilot project when no standards for evaluating that project are provided?

The III was supposedly begun as a test, but it was institutionalized without really any evaluation of its early operations. The only evaluations done were, I think, technical ones of how it worked, how the relationships between local users and the FBI at the center work, not with respect to its ability to control crime and its ability to provide privacy protections.

Then I have questions about the contents of ECI records. What items will be included in an ECI record besides those specified precisely in the limited feasibility study which has been provided to us?

That document refers to including a suspect's associates but does not define that term or indicate what information on these people will be included. Would anyone who worked with a suspect be included in that person's record, all family members, and what does the term "miscellaneous information," which is listed as part of the contents of ECI records, mean?

How will the accuracy of items included in a record be verified and kept up to date? Verification, if it is required in any comprehensive way for all the States that use this file, will be a massive process and very expensive.

NCIC has consistently maintained, at least with users, that local users must be responsible for maintaining the accuracy of the records they submit for the III and wanted persons files. What indication is there that NCIC would assume a greater burden, a greater responsibility, for data control in the ECI?

Then I have some questions about how this file will be initially put together, and these are questions that truly come from ignorance, because I don't know how the original lists are compiled.

Will the material from the FBI's field office information management system be the basis originally for that file? My understanding is that white-collar crime investigations in the past have begun at the local FBI office. So will this initially be a compilation of data from many different sources?

Will computer matching of lists of suspects with other lists, like bank records, credit card records, taxpayer records, be done, and, if so, is there authority for casting that kind of net?

Will the files of other Federal agencies with criminal investigative jurisdiction in white-collar areas be included?

What standards will be applied to decisions on inclusions of initial record items? Will reasonable suspicion be enough to justify a subject's inclusion in the file, or will probable cause be required? How will the FBI evaluate the source of the suspicions of misconduct? How will the reliability of the sources be determined?

Then I have some questions, of course, about access. Who exactly will have access to the file? The feasibility study suggests that inquiries—that is, requests for information—will be limited to "those of an administrative nature initiated by an appropriate official of the FBI's Technical Services Division."

I interpret this on its face to mean that the ordinary police officer will not have access even when the system is available to all NCIC users, but I'm puzzled because surely it doesn't mean that this narrowly defined group of FBI officials will be the only ones who can retrieve information from the file. If so, there will be no incentive to go to the trouble of entering information, and presumably one of the reasons for having this file so widely accessible is not solely that people can, out there in the 64,000 agencies, get information from it but so that they can put information into it.

At one point, the document suggests that entry of data already in the record constitutes a hit, which then triggers verification of the data to the user.

I'm not sure really what that means. Does that mean that the only way a remote user can gain access for inquiry is to enter data which rings a bell and is verified, and that at that point the user can receive other information?

I think that this committee needs to ask for much greater clarity with regard to access for both inquiry and entry which is not carefully distinguished in the proposal.

Finally—this is my last set of questions—I'm concerned about how records will be corrected and removed.

I wanted to say to the minority counsel who asked questions at the end of the last testimony, that while there are relatively few suits in this area, and while we may know of only a few more, even if it's in the hundreds of people who have been badly dealt with by this system but have not brought suits, in fact we do know from studies conducted by OTA and others that there is a very large number of stale warrants in all these systems, local and Federal.

In effect, if there are a large number at the local level, there will be a large number at the Federal level. It's the lack of correction at the local level that results in the problem at the Federal level.

I have talked with people in California and New York who suggest that from time to time there may be as many as 20 percent of warrants which are stale or invalid or simply have not been removed.

What procedure will be developed here for correcting inaccurate or outdated records? Will it depend on action taken by a local user? Correcting both automated warrant systems and computerized criminal history record systems at the local level has proven very difficult. Will the ECI be any different?

At what point will a record be removed from the file? Will records be retained when an investigation has been closed, and, if so, with what justification?

Finally, I would like to conclude by stressing again the importance of looking very closely into this and other expansions of the already vast network of incriminating records that is denying people jobs, leading to false arrests, and stifling legitimate dissent every day in this country.

The issues are civil liberties issues, which are terribly important, but they are also basic social justice issues. The high proportion of blacks in mistake cases surely suggests that there are differential impacts of these systems on groups that are already disadvantaged in our society.

Fourteen years ago, Professor Vern Countryman of Harvard Law School wrote an extremely influential law review article in which he concluded that, "The only hope for substantial protection of privacy against the computerized dossiers is that they not exist on the present scale." In light of the growth of computerized records since then, his statement sounds increasingly naive, but it is still right.

Only you and those you must persuade can limit the collection and dissemination of computerized records to situations where a vital public purpose can be served in no other way. I urge you to hold to that standard and thank you very much for inviting me to participate.

[The statement of Ms. Gordon follows:]

STATEMENT OF DIANA R. GORDON

I am Diana R. Gordon. I am an Associate Professor in the Political Science Department and at the Center for Worker Education of the City College of New York. In 1982 and 1983 I was President of the National Council on Crime and Delinquency. I have been writing and speaking on criminal justice policy for more than ten years.

I have been asked to comment on the implications of the economic crime index proposed as an addition to the 12 files which currently comprise the National Crime Information Center maintained by the FBI. The economic crime index, or ECI, would contain records on individuals under FBI investigation for white collar crimes. Records would include such information as name, physical description, address, phone numbers, Social Security and other identifying numbers, vehicle information, bank account numbers, and names of associates. Although initially the file would be accessible only to the FBI and the Department of Justice, all 64,000 NCIC users would have access within two years.

It is virtually impossible right now for anyone outside the Justice Department to know much about the ECI because the documents made available on it thus far provide a very incomplete description. As a result, I have more questions than answers at this point. I will be asking some of them today, as well as setting forth the values and concerns which frame them.

I do not for a moment denigrate either the technical difficulties of conducting meticulous and comprehensive investigations of white collar crime or the attractions of technology which appears to get around some of those problems. But investigative records on individuals, compiled and used by a broad range of law enforcement agencies, are bound to share some of the problems encountered in the past with the collection and dissemination of computerized criminal records. I am concerned with errors which cast suspicion on innocent people, unauthorized uses of records for political and other purposes, and the inexorable expansion of users and uses of records. Finally, I am doubtful that computerized, centralized data bases are a more effective way to catch law violators than competent regulation and investigation by the agencies mandated to do those jobs.

The Possibility of Mistake

Personal information on individuals collected and retained by law enforcement is too often inaccurate or applied inaccurately. Recent "wrong warrant" lawsuits all over the country testify to the difficulties of getting even the identity of suspected individuals right. The RCI could surely not include fingerprints for every person in the data base; in that respect it would be like files of outstanding warrants, based on names and other identifiers which cannot protect against cases of mistaken identity. Credit card fraud, a crime for which suspects are proposed for inclusion in the file, will pose great risk of the mistake of entering the name of the victim whose card has been stolen and basing the record on this incorrect identifier.

The ECI proposal contemplates ultimately allowing access to the file to thousands of NCIC users with varying attitudes toward and resources for protecting the accuracy and security of computerized data. Surely the ECI is likely to encounter some of the data quality problems of the NCIC's Interstate Identification Index (III), which also relies on entries from many sources all over the country. Consider, for instance, the continuing problem of dispositions missing from criminal history records compiled at the state level and passed on to the III. That phenomenon suggests that timeliness of reporting is difficult even when the item of information is an official incident. How much more difficult will it be when the information is the license plate number of a new car or the name of a new associate? And consistent accuracy of records is less likely when the file contains investigative information "based on leads developed prior to issuing a warrant," as the ECI will, than when the items reflect decisions of public record, as the III does.

The Possibility of Abuse

Abuse is at least as serious a problem of computerized criminal records as mistake. Sometimes the abuse is the use of intrusive shortcuts to reach an end appropriate to law enforcement or crime prevention. A recent court settlement in

Louisiana reflects, in part, efforts to curtail, in New Orleans, unauthorized criminal record checks for employment purposes. In Ventura County, California, a game warden obtained access to rap sheets through law enforcement agencies and then sold them for $25 each to a private investigator. And a Los Angeles police intelligence officer recently pled guilty to obtaining and using the criminal history records of members of the Jewish Defense League as part of a moonlighting job for a private security company. While the ECI proposal suggests that requests for information from the file will be limited to "administrative inquiry" (whatever that is), that will probably not, without explicit regulation and monitoring, prevent unauthorized access. In recent interviews in two major states, I have been told that the Defense Department investigators have attempted to gain access--without authorization--to state criminal history records. And I noted with interest a New York *Times* story last week--emanating from another hearing of this Subcommittee--suggesting that the Defense Investigative Service may have been conducting its own counterintelligence activities outside surveillance guidelines. I can imagine that it might be hard for NCIC to say no to Defense Department requests for access to the ECI, even though unauthorized.

Sometimes abuse of computerized records is the exploitation of the technology to achieve ends totally outside the proper scope of governmental power, like the suppression of political dissent or blackmail. This hidden expansion of government social control is most apparent as police spying at all levels of government. The political surveillance conducted by police during the 1960s and 1970s in such cities as Chicago, Baltimore, Philadelphia, Indianapolis, Los Angeles, Richmond, Houston, and New York City is no secret. State police spying on prominent citizens has been acknowledged in both Texas and New York. In 1974 the Justice Department admitted that, for three years, the NCIC computer had been programmed to notify FBI headquarters daily of any inquiries made by state and local law enforcement agencies about anyone on a list of potentially sensitive persons whom the FBI wished to track. More recent are the bizarre revelations of the collection and use of data by the Los Angeles Police Department's now-defunct Public Disorder Intelligence Division and Jay Paul, one of its detectives. In 1983 it was discovered that, with the approval of his immediate superiors in the Police Department, Paul had used his access to the Division's files to help Western Goals, a private intelligence agency in Virginia, build a computerized data base on the political activities of thousands of Americans.

I am certainly not suggesting that the ECI is being created as a device for political surveillance. But the portability of computerized files poses a great temptation to use them for purposes for which they were not intended, especially when perceived emergencies call for speedy response. I would want to be very sure, for example, that ECI records were not used without specific authorization to broaden or enrich the FBI's terrorism investigations, no matter how high a priority they became.

The Tendency for Unregulated Expansion

I am also concerned about the general trend toward unregulated expansion of computerized files which may influence criminal investigations and, at some future date, employment decisions. In an influential law review article fourteen years ago Professor Vern Countryman of Harvard Law School, warning of "the misconception that whatever technology can produce should be used," called on Congress to mount "a rigorous inquiry into the actual need" for compilations of data on individuals. No such inquiry in the area of criminal records has been made, and the result is a seemingly unending stream of expansion and combination of files at all governmental levels. Around the country, for example, access to criminal history files and child abuse registries--which are often based on unsubstantiated "indications" of wrongdoing--is being expanded to private and public employers of child care workers, despite lack of evidence that criminal history record checks can identify past or potential child abusers. Closest to home are no less than five proposals made during 1984 for either expanded access or additional information for NCIC files, not counting the ECI that we are considering today. Combining files is also common, a type of expansion where the whole dossier that results may be more of a threat to privacy than the sum of the parts, each of which constituted information justifiably collected for more limited purposes. In addition to the expansions mentioned above, the FBI is proposing a cross-search of three of the NCIC files--effectively a combination of the records--so that inquiries of any one file would trigger a search of all three.

The proposed NCIC expansions are all presented on the assumption that no new legislative authority is needed. But it is difficult to justify the lack of regulation of law enforcement records. Criminal justice records were explicitly intended to be outside the purview of the Privacy Act because the subject was felt to be of such importance that it should receive special legislative attention--attention which, however, has never been paid. And law enforcement officials have resisted regulation. NCIC's Advisory Policy Board opposes even the data quality requirements that would be imposed on criminal histories stored in NCIC files under the legislation proposed last year by Congressman Charles Shumer of Brooklyn. It is worth noting that investigative information of the sort that would be included in the ECI is probably excluded from the federal regulations governing the collection and maintenance of criminal history information.

The Question of Effectiveness

The major justification for most proposed additions to computerized record-keeping is not pressing need but greater efficiency. But efficiency alone should not be a goal sufficient to supersede constitutional rights to privacy and freedom of association. Besides, the computerized files are often inefficient in achieving the long-run goal. Take last summer's child abuse scandal in New York. The principal governmental reaction to those distressing events has been a costly review of day care workers' records that has not--as of the most recent public reports--uncovered any convicted child abusers. And employees there allege that hiring practices have long been sloppy, with insufficient attention given to measures like [illegible] testing and ordinary reference-checking, which have less likelihood of abuse than criminal record checks.

Having recourse to an NCIC economic crime index seems a little like the ineffectual and intrusive overkill of the criminal record checks for day care workers. It is proposed as a device for coordinating financial crime investigations at a time when, for at least some such crimes, the principal problem seems to be not lack of coordination but inadequate measures taken by the federal regulatory agencies. Six months ago the House Committee on Government Operations issued a report on the federal response to insider fraud leading to bank failures, one of the categories of economic crime for which use of the ECI is proposed. The Committee found that in each of the failures studied "the appropriate federal bank regulatory agency had ample advance warning of unsafe and unsound banking practices--particularly insider misconduct--prior to insolvency, but failed to take prompt and effective remedial action." Concerned that the increase in bank failures reflected a "lack of interest in dealing with insider abuse in a meaningful way," the report urged "a fundamental revamping of the banking agencies' role in the fight against insider abuse and fraud," including improvements in investigatory practices, training for bank examiners, and bank acquisition procedures. (It also called for a computerized information system to help the banking agencies and the Department of Justice keep track of pending investigations, but not for a file controlled by the FBI and available to 64,000 law enforcement agencies.) I submit that the effect of the proposed ECI on bank fraud would be minimal in comparison with the effect of increased regulatory and investigative competence of the banking agencies. And when it is likely that government can attain law enforcement ends as successfully by pursuing less intrusive means than making investigative files widely accessible, it should do so.

Questions to be Answered

In hopes that the hearings can flesh out our understanding of how the ECI would work, I will now pose some questions which I hope will be answered by Department of Justice officials in subsequent sessions.

Need for the ECI. Why, specifically, is the ECI needed? The justification provided in the NCIC Staff Paper (October 15, 1984) and the "Limited Feasibility Study of the Implementation of an Economic Crime Index in the NCIC System" refers generally to the need for coordination of white collar crime investigations and cites the "limited experience and resources" of the investigative agencies that handle financial crimes. If the problem lies where the proposal suggests, doesn't the solution lie there too, with more competent financial crime enforcement? Lack of resources has not prevented Attorney General Meese and FBI Director Webster from entering into a recent agreement with the banking regulatory agencies "to improve the detection, investigation, and prosecution of bank fraud cases." And if lack of resources is such a pressing problem, why not restore the budget cuts made last year in the Investigator General staffs of many agencies having criminal investigative jurisdiction, as well as the 15% cut in lines for white collar investigators in the FBI?

What evidence is there that in high priority financial crime areas the ECI could make a crucial difference in the course of investigation or prosecution? As mentioned earlier, many of the bank fraud cases seem to have escaped the bank regulatory agencies because of ineptitude, not lack of interagency coordination. It appears, for example, that proper review by the Comptroller of the Currency would have prevented the fraudulent purchase of the Ranchlander National Bank in Midland, Texas, which led to looting and collapse in 1982. (Representative Doug Barnard(D., Ga.), Chairman of the Commerce, Consumer and Monetary Affairs Subcommittee of the Committee on Government Operations and himself a banker, said after looking at this case, "If you had been a banker, you would not have made this crowd a loan, much less have given them a bank charter.") Furthermore, the bank was actually bought by the girlfriend of the principal perpetrator of the crime. Because she was not the subject of an economic crime investigation, she wouldn't have been found in an ECI. The case of the Empire Savings and Loan Association--resulting in the most expensive FDIC payout ever--is like many others in that there were many early unheeded warnings of criminal misconduct. After the bank failed the *Wall Street Journal* said the Federal Home Loan Bank Board had taken a "low-key approach" to evidence of faulty lending practices, "dealing with the problems through correspondence rather than insisting on a meeting with...management." These faulty preventive and investigative procedures would not be addressed by the existence of an ECI.

What kinds of crimes will be covered by the ECI? The proposal mentions only bank frauds, procurement frauds, and credit card frauds. But "economic crime" is a sweeping category. Will it include, for instance, investigations of government securities dealers like those that have collapsed within the past few weeks? How, and by whom, and with what oversight, will decisions about new investigative areas be made? In the government securities area, an unregulated industry, rational planners concerned with protecting the public might argue that priority should be given to the establishment of an ongoing regulatory scheme which would prevent frauds rather than to an elaborate system of coordinating investigations after the fact.

Timing of the ECI Proposal. Why is the ECI proposed just at the time when an eighteen-month study of the entire NCIC is beginning? NCIC officials have themselves expressed doubt about whether their system is up-to-date enough to perform efficiently the technical tasks needed and also provide adequate privacy and security protections. Should not the establishment of major new files await the results of the study now underway? Last year's proposal of an NCIC file to include data on organized crime and terrorism suspects was shelved pending the redesign of the NCIC network. Is that result not appropriate for the ECI?

Of what significance is the "test phase" proposed for the ECI over the next two years? Is it meaningful to speak in terms of a pilot project, when no standards are provided for determining whether the pilot is a success or a failure? The III was supposedly begun as a test, but no evaluation of its early years was ever performed, and it became institutionalized as a matter of course. Is that not the probable outcome of the current proposal?

Contents of ECI Records. What items will be included in an ECI record besides those specified precisely in the "Limited Feasibility Study?" That document refers to the inclusion of a suspect's "associates" but does not define that term or indicate what information on those people would be included. Would anyone who worked with a suspect be included in that person's record? All family members?

How will the accuracy of items included in a record be verified and kept up-to-date? If items can be entered by any NCIC user anywhere in the country, verification will be a complex and massive process. NCIC has consistently maintained that local users must be responsible for maintaining the accuracy of the records they submit for the III and Wanted Persons file; what indication is there that NCIC would assume greater responsibility for the quality of data in the ECI?

What data bases will supply the information initially stored in the ECI? Material from the FBI's Field Office Information Management System? Other NCIC files? The files of other federal agencies with criminal investigative jurisdiction? Will computer matching of lists of suspects with other lists like bank depositors, credit card holders, and taxpayers be done? If so, what authority justifies casting that kind of net?

What standards will be applied to decisions on inclusion of

initial record items? Will a "reasonable suspicion" be enough to justify a subject's inclusion in the file? Will the source of the suspicions of misconduct be taken into consideration in judging the credence to give to the allegations? How will the reliability of sources be determined?

Access to the ECI. Who exactly will have access to the file? The "Feasibility Study" suggests that all NCIC users may be allowed to enter data but states that inquiries--that is, requests for information from a record--would be limited to "those of an administrative nature initiated by an appropriate official of the FBI's Technical Services Division or Criminal Investigation Division." What does this mean? Surely not that other NCIC users would be unable to retrieve information from the file. If so, there would be no incentive to go to the trouble of putting data in. So what is the process by which non-FBI users get information? What is "administrative inquiry," and how does it "protect the confidentiality" of the ECI, as the proposal claims? At one point the documents suggest that entry of data already in the record constitutes a "hit" which then triggers verification of the data to the user. At that point, is the entire record available to the user?

Correction and Removal of Records. What procedure will be developed for correcting inaccurate or outdated records? Will it depend on action taken by a local NCIC user? Correcting both automated warrant systems and computerized criminal history record systems at the local level has proven very difficult; will the ECI be any different? At what point will a record be removed from the file? Will records be retained when an investigation has been closed? If so, with what justification?

Conclusion

The mission of this Congressional Subcommittee is vital. And there is no area where threats to civil and constitutional rights are more potentially devastating than the use of information collected for law enforcement purposes. We are considering here devices and procedures which may affect not only civil liberties, important as they are, but also basic social justice. I urge you to look very closely into this and other expansions of the already vast network of incriminating records that is denying people jobs, leading to false arrests and stifling legitimate dissent every day in this country.

Fourteen years ago Professor Countryman concluded that "the only hope for substantial protection of privacy against the computerized dossiers is that they not exist...on the present scale." In light of the growth of computerized records since then, his statement sounds increasingly naive. But it is still right. Only you and those you must persuade can limit the collection and dissemination of computerized records to situations where a vital public purpose can be served in no other way. I urge you to hold to that standard.

Mr. **Edwards**. Well, thank you very much, Professor Gordon. That's really immensely valuable testimony. It's going to help so much in the work that we're going to be doing on this issue.

Ms. **Gordon**. Thank you.

Mr. **Edwards**. I recognize the gentleman from Michigan, Mr. Conyers.

Mr. **Conyers**. Thank you, Mr. Chairman.

I am one who likes to go forward in our society, improving things, enjoying technology as it develops, but now, after these hearings, I have a strong commitment to the good old days in which policemen, with their suspenders and the felt hat and their gun in holster, would check out the leads by hand and by telephone themselves, and there were no computers present.

There's this hankering coming over me to see the cops the way they used to be.

Mr. **Edwards**. The trenchcoats.

Mr. **Conyers**. The trenchcoats, the whole bit—Dashiell Hammett, all the way.

I mean, do we have to go into this new modern era? Is this necessary?

Ms. **Gordon**. Well, first of all, this has nothing to do with technology really, but I think police are considerably less often brutal than in the good old days. I don't think police practice overall was better in the good old days.

I do think that the emphasis on crime fighting at the local police level has had some problems, and we are beginning to acknowledge those problems in criminologists' studies at the local level, and there may be some lessons for Federal enforcement.

Recently, the emphasis on the duty of local police has begun to shift back from crime fighting to order maintenance. That's what the criminologists call it. That is, trying to be in your neighborhood on foot, dealing with the broken glass, the broken store window, the trash, which, if it gets worse, brings the drug dealers and generates a sense of criminality in the neighborhood which escalates.

We are trying now, I think, to shift back to some extent to that order maintenance function, and perhaps an analogy can be drawn to the Federal response to disorder in the white-collar community by working hard at better order maintenance in these areas of securities regulation and bank regulation and things like that.

If we are going to push the emphasis back toward real prevention, toward effective, competent regulation, rather than the more focused crime control law enforcement role of the FBI, we could have more limited computerized schemes.

I'm not prepared to throw out the computer—that is, the baby—but I do want to get rid of an awful lot of bath water, and I think that we could constrain the use of computers, we could limit the combination of networks that's going on now, we could limit computer matching. But we need a kind of political will that I don't see at present.

We need something more than a privacy commission. I don't know what to call it, but we need a truly vigilant system that restrains this technology within very strict limits. I don't know whether we are going to get that or not.

Mr. **Conyers**. Well, that's a pretty good answer, and it leads me to my last question. If the only one that can generate the will that you suggest is our fearless leader, Don Edwards, he may do this, and he may not. His record of victories is less than 100 percent in the Congress.

If he fails, would you consider throwing out the baby?

Ms. **Gordon**. I don't know.

I have really only started working on the impact of criminal history records in the last year, and I'm very struck by the fact that every time I write or speak, I get many people who call and write and tell me about the violations, some of them not in this area but in related areas, and in areas which you would never think of unless you heard somebody's individual story. I am convinced that the young, the poor, the black have—as a result of computerizing records of all sorts—a massive obstruction against growing up easily, finding good jobs, participating in the good things of American life.

On a day when I've heard a lot of these stories, I guess I am prepared to throw out the baby, but I also know that there are great aids to regulatory investigation that can be provided by computers. There is a tremendous amount of good computers can do.

I think we need a kind of vigilance over computers that we haven't tried at all yet.

Mr. **Conyers**. Well, I thank you for your presentation.

Ms. **Gordon**. Could I add one thing, and that is that I think the next area of vigilance for this committee ought to be an examination of the total list, not just the ECI, of expansions planned for the NCIC, which is, to me, as troubling as the ECI proposal.

Mr. **Conyers**. It will all be probably in the next session, assuming we're here in the next session, because you've given us enough questions to talk with the FBI and the NCIC experts for the next month or two. I don't know if we'll ever get to any of the other issues here, but I thank you very much.

Ms. **Gordon**. Thank you.

Mr. **Edwards**. Mr. Dempsey?

Mr. **Dempsey**. Thank you, Mr. Chairman.

One of the arguments that has been made in support of the NCIC and in support of a file like the Economic Crime Index is that they're necessary and important today because criminals are increasingly mobile and travel interstate.

Do you have any response to that? Are computerized data bases in the nature of the NCIC the way to deal with that problem, if it is a problem?

Ms. **Gordon**. Well, it certainly does seem to be the case that there is more and more interstate crime. It shouldn't be surprising, given our greater and greater mobility.

Whether most of those crimes and most of those situations need the speed of electronic transfer, I don't know.

I know that most of the interstate crimes or the multistate offenders are for more serious offenses where there is a long-term investigation.

It's not usually the situation where the criminal is in one State, and he's stopped by a cop, and they need to get his record from the other State instantly. Those are a minority of cases, I'm sure, and the mails are probably adequate, even these days, for most interstate exchange, but certainly not for all.

Mr. **Dempsey**. One concern with the Economic Crime Index is that it would include investigatory data as opposed to public record data.

Now, an argument can be made that the missing persons file, or the stolen property file, or other files already in the NCIC contain investigatory data or are based on investigatory data—that is, whether a person is missing or not, whether a piece of property is stolen or not, is an investigatory, perhaps as yet unproven, fact.

Do you see any distinctions between the Economic Crime Index and the type of information that it might include and the ways it might be used, as compared with these other files?

Ms. **Gordon**. Yes, I do.

Those other situations are far less complex than the investigations of most economic crimes. A white-collar crime investigation is something that accretes over a fairly long period of time. It's not like finding your car, where you find it, or you don't.

I would assume that what generally happens is that little bits of data are added, some of them accurate, probably a few of them inaccurate, over a fairly long period of time, and that the opportunities for error are greater in a situation like that.

Also, I don't know that those other files contain information on associates. That's obviously a matter of great concern.

It was a matter of great concern to this committee last year with respect to the possibility of opening a file on terrorists and economic crime suspects. If you had the associates of suspected narcotics traffickers, you would include millions of people. If you have the associates of all those suspected of bank fraud, you would presumably have a very large number of people on whom some doubt is cast.

Mr. **Dempsey**. The Justice Department right now undoubtedly already has an investigatory file or files on white-collar crime, and whether that information is computerized or not, at this point it would be internal to the Department of Justice.

Ms. **Gordon**. I'm sure that's part of the FOIMS system—the FBI's Field Office Information Management system.

Mr. **Dempsey**. And presumably this information is shared with other Federal agencies and even other State and local agencies where those agencies are cooperating on or participating in a specific investigation.

Now, my question is, why isn't the Economic Crime Index justified on the basis that it merely facilitates this process of exchange by using the NCIC computer?

Ms. **Gordon**. Well, it seems to me there will be much less control over the ECI.

I don't, in fact, know how wide the reach of the existing system is, but I would assume that anything that goes outside the FBI is handled on a very individual basis by FBI agents.

With the ECI, as I understand it, if anyone can enter data, then it goes very broadly to the possibility of any one of these 64,000 agencies entering data, and I presume that there will be a tremendous number of different standards for the reliability of the information that is collected, probably almost as many standards as there are agencies entering the information.

Mr. EDWARDS. If the gentleman will yield, Professor Gordon hit it right on the head.

If a local police officer phones the FBI and asks them about something, the agent, being a well trained professional person, will be very, very careful about providing information—investigative information—or to a congressional committee, and then I agree with them that they should not provide us with information from their files.

But this is file information; just push a button, and there it is. Professor Gordon describes it very well.

Mr. DEMPSEY. So you would be less concerned if access to the file were limited to Federal agencies or to only certain law enforcement agencies that are participating in specific—

Ms. GORDON. Well, I would be less concerned, but I would still be concerned, because my basic position about this is that, before it is clear that we need any of this at the FBI level, we ought to be trying to do some of the preventive investigative stuff with the agencies that regulate the businesses where white-collar crime is happening.

Mr. EDWARDS. Counsel?

Mr. KIKO. Assuming your questions can be answered satisfactory to you, are you in favor of the Economic Crime Index?

Ms. GORDON. I guess I find it hard to imagine that the questions can be answered satisfactorily for the reason that I just gave here, that I think before we move to this level of attention—crime control attention—we ought to be working on prevention.

So I would be opposed to the ECI at this point.

I think no matter what the answers, if there were, you know, a showing of compelling need over the next little while and tests of other ways of dealing with these problems, I suppose I might change my mind.

Mr. KIKO. What other ways would that be?

Ms. GORDON. Well, improving enforcement of regulatory patterns. For instance, the agreement that Attorney General Meese has just made with the four Federal banking agencies suggests, among other things, that they are going to try to improve their audits, their bank examiner practices, all of those kinds of things, in dealing with bank fraud as well as dealing with the crime control aspects of it. In addition, there's a long list of recommendations made by the Government Committee on Operations with respect to dealing with bank frauds.

If the government securities industry were regulated, if in the banking industry we really had effective protections against fraud, and still there were massive white-collar crime problems, I can imagine setting up a limited, internally managed economic crime index.

Mr. KIKO. But isn't it up to the Justice Department to coordinate all this? Would you be in favor of information sharing with the Justice Department through computers?

Ms. GORDON. Well, I don't know that it is the responsibility of the Justice Department to coordinate the initial auditing, bank examining—all of that. That's the responsibility of the bank regulatory agencies.

Mr. **Kiko**. They have to sue, in the ultimate case, much of this for criminal investigations and violations.

Ms. **Gordon**. When it gets to that point, but I think many fewer cases would come to the Justice Department, and should come to the Justice Department, if the regulatory schemes were working.

Mr. **Kiko**. You did mention that white-collar crime is a lot more complex. Isn't that a good argument for including investigative information on the NCIC? And it seems to be getting more complex.

Ms. **Gordon**. No. I think just the opposite. I think the more complex it is, the more confused people are about standards to apply to it and the more uncertainty there is about whether this little bit of information which you have available today is relevant or not.

Mr. **Kiko**. So you would just prefer to have all this information out there and not coordinate it any particular way on a computer so a law enforcement agency would be able to have it under one roof?

Ms. **Gordon**. No. I think when a real problem has arisen, a problem that could not be dealt with any other way, that the Justice Department ought to mount aggressive enforcement efforts; absolutely.

I don't see that this gigantic network available to 64,000 agencies is an efficient or a fair or constitutional way to do it.

Mr. **Kiko**. I have no further questions.

Mr. **Edwards**. Well, this has been a concern of the subcommittee for a long time—the desire to try to prevent the NCIC from becoming an all-encompassing giant that overwhelms us.

About the only rule that we were able to respect was that the information going into a computer system like this on a nationwide basis, with all of the outlets it has—the original concept was it ought to be public information—indictments, stolen property, wanted persons, and so forth. Criminal records are okay. That all generally can be described as public record information.

Then the encroachments started, and each time we resisted them but didn't have the votes to prevent it from happening, and perhaps it was not too great a loss.

The Secret Service tracking system was established for persons who might very well be a danger to the people protected by the Secret Service, and that was a major change that violated the general rule that we think is proper for the NCIC.

The missing persons file bothered us, except that missing persons usually would have given their consent anyway.

But when you get into file information on persons who are suspected of crime or who might commit a crime, it almost makes it wide open.

Where do you go from there? Associates of suspected persons, sexual deviants who might commit a crime someday—what is the threshhold going to be?

How do you think they can control the threshhold for entering suspected person, who might commit a crime, into the system? Shouldn't the threshhold be specified by law, or are we going to let any of the 64,000 agencies put it in, or should the director of the FBI have to review it?

Ms. **Gordon**. I certainly think there ought to be much more stringent data quality requirements, but I don't know how you really police that.

At the moment, they are not well policed, and, given that, I guess the limitation to matters of public record is as good as any, but I don't think it's perfect either, because there are lots of problem of error and outdatedness with those kinds of records.

I don't think I have a clear answer for you.

Mr. **Edwards**. Professor Gordon, we thank you very much. You have been very helpful.

Ms. **Gordon**. Thank you very much. I'm glad you're concerned with this.

Mr. **Edwards**. The subcommittee will meet again tomorrow at 9:30 in this room, and we're going to have our friends from the FBI and the Department of Justice.

[Whereupon, at 12:00 noon, the subcommittee was adjourned, to meet again the following day at 9:30 a.m.]

FBI AUTHORIZATION REQUEST FOR FISCAL YEAR 1986

THURSDAY, APRIL 25, 1985

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met at 9:45 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, and Sensenbrenner.

Staff present: James X. Dempsey, assistant counsel, and Phil Kiko, associate counsel.

Mr. Edwards. This morning is the third of our three scheduled hearings on the FBI's 1986 authorization request. This morning we will focus on the NCIC and, in particular, on a proposal to add to the system a new file, known as the Economic Crime Index.

Let there be no doubt that white collar crime is a serious problem and this subcommittee fully supports all appropriate efforts to investigate and prosecute such offenses. Among the many questions we have, however, is one of efficacy: Will the proposed ECI address the problem?

For example, many bank fraud cases seem to have escaped the bank regulatory agencies because the agencies themselves were ineffectual, not because there was a lack of interagency coordination. Six months ago, the House Committee on Government Operations issued a report on bank failures and found that, in each of the failures studied, "the appropriate Federal bank regulatory agency had ample advance warning of unsafe and unsound banking practices—particularly insider misconduct—prior to insolvency, but failed to take any prompt and effective action." One witness yesterday cited the Ranchlander Bank case and the case of the Empire Savings and Loan Association—which resulted in the most expensive FDIC payout ever—as two examples of early unheeded warnings of criminal misconduct. So, we are going to ask Mr. Jensen and the other witnesses, how is the ECI going to address these faulty preventive and investigative procedures?

Also, as was testified to in other hearings, we have serious civil liberties concerns about setting up national files on individuals who are merely suspected of criminal activity and who perhaps are not guilty of criminal activity.

As we understand this proposal, it would allow the FBI to determine whether an individual is under suspicion for a wide range of crimes anywhere in the country. This would greatly expand the capabilities of the FBI. It is a revolutionary idea.

Director Webster has indicated that this proposal is still under study. We hope, Mr. Jensen, that the Department and the Bureau will not rush forward with this proposal without considerable further study.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much, Mr. Chairman.

I would like to label yesterdays hearing and todays hearing as the knee-jerk reaction series of hearings. It seems that any time there is a proposal to expand the NCIC, that my good friend from California and those on the majority side are opposed to it, however, usually without thinking the thing through.

I remember, 2 years ago, the majority in this committee had a "caniption" over the proposal to put Secret Service files in the NCIC. And they were wrong on that one, because within a day after the Secret Service files were incorporated into the NCIC, there was a gentleman who had stolen a car in California, picked up in Jackson, MS, who told law enforcement officers that he was on his way to Washington to get the President. Without the NCIC information, he may very well have made it to Washington, DC to a fate unknown.

I think that any proposed expansion of the NCIC requires very careful study to make sure that innocent people are not ensnared. But I see the majority on this committee viewing negatively any proposed reaction or any proposed inclusion of additional names in the NCIC. I think that is a knee-jerk reaction without really determining how it can improve law enforcement. I am not prepared to support the inclusion of the Economic Crime Index in the NCIC at this point in time, but at least I have an open mind on the subject and so do my two colleagues on the minority side.

I welcome Mr. Jensen's appearance today to help blow away some of the cloud of fog that has been placed around this proposal.

Mr. **Edwards**. We also welcome Mr. Jensen, the Associate Attorney General. Together with our new Attorney General, he is a neighbor of mine, coming from Alameda County, the southern part of which I've represented for nearly a quarter century.

We welcome you, and you may proceed.

TESTIMONY OF D. LOWELL JENSEN, ASSOCIATE ATTORNEY GENERAL

Mr. **Jensen**. Thank you very much, Mr. Chairman and Congressman Sensenbrenner.

I appreciate this opportunity to appear here today and to make clear the position of the Department of Justice on the problem of certain aspects of economic crime in this country, and to discuss the proposed Economic Crime Index. Let me state at the outset that we view the index primarily as a way to take law enforcement coordination out of the horse-and-buggy days. Just as modern technology can be used to carry out criminal schemes employing fraud stealth, and coverup, it can be used to detect, apprehend, and successfully prosecute the criminals among us.

This country faces an economic crime problem of disturbing dimensions. Moreover, we often confront a tendency to dismiss so-called white collar crime as some lesser form of criminality. When the subject is touched upon in our fiction, we often find an inventive, glamorous figure who steals only from the dishonest, the rich, or the greedy. When the subject is touched upon in more serious tomes, it tends to be approached from the opposite direction, a presentation of abstract concepts and statistics only distantly related to the lives of individual citizens.

The reality is, of course, that white collar crime affects innocent people who frequently can ill afford to bear the loss, and whose lives are sometimes affected very directly and very tragically. Among true victims are: The 100 elderly citizens who lost their life savings on a retirement village scam in Florida, half of whom also lost their self-sufficiency as a consequence and were made destitute; farmers in the Midwest who, unable to obtain loans from local sources, sold their few remaining possessions to pay an advance fee to an out-of-town confidence man in a last ditch effort to save their farms; the hospital patient who, because of a diploma mill selling phony medical degrees, was left brain dead by a degree-buyer posing as an anesthesiologist; and the patients whose proper treatment for cancer and other diseases was delayed for a protracted period while they pinned their hopes on the efficacy of a wonder machine touted by a medical "quack."

It is only by keeping in mind the effects on individual victims that we can begin to appreciate the real extent of the losses caused by white collar crimes.

Even when we do view it in more abstract terms, in dollar amounts, the direct loss caused by white collar crimes is staggering. In 1974, the National Chamber of Commerce estimated the annual loss through white collar crimes at $40 billion. In 1982, the accounting firm of Peat, Marwick, & Mitchell then estimated the loss to be $200 billion. Over $100 million is lost annually through "boiler room" operations selling commodities such as precious metals by telephone. Over $100 million per year, in each of the last 5 years, has been lost in real estate investment schemes in California alone. Hundreds of millions of dollars have been lost by tens of thousands of investors who have been victimized by fraudulent financial service brokers operating in Florida, California, Utah, Ohio, and New Hampshire. About $80 million was lost in a single investment fraud scheme on the west coast, a scheme that culminated last month in a financier's entry of a plea of guilty. Almost $700 million in losses resulted from a Tennessee bank fraud scheme that concluded with a banker's entry of a plea of guilty 3 days ago.

White collar crime, therefore, carries unusually serious consequences for the well-being of our Nation. It siphons billions of dollars a year from our economy. It adds to the costs of goods and services, and subtracts from the revenues otherwise available to the Federal and State treasuries. It thereby aggravates the financial burdens of all Americans, the indirect victims of fraudulent offenses as well as the direct ones.

The problem of white collar crime is compounded when we realize that it is extraordinarily difficult to investigate successfully. Since it frequently succeeds by deception, coverup, and record manipulation, its victims may be unaware that a crime has been committed until long after the event. Its practitioners are quick to grasp the advantages of employing both the latest advances in business techniques and the latest advances in supporting technology. Moreover, the operators may work in one location, while their victims may be in another city, another State, or even another nation. In fact, we have had convicted offenders tell us that they deliberately set up operations in areas separate from the victims in order to disrupt the normal investigative process where the offender and the victim are within the same jurisdiction. Consequently, when white collar crime occurs it is often difficult to detect, and when it is detected it is often difficult to obtain all the evidence necessary to prove the offense beyond a reasonable doubt. As a result, white collar crime poses special investigative challenges at all levels, Federal, State, and local. It also presents a special need for effective interagency coordination.

Sometimes it is useful to have our views confirmed by the observations of outsiders. In 1983, a Wall Street Journal reporter, Jonathan Kwitny, published a book about white collar crime—the "Fountain Pen Conspiracy." He entitled the last chapter "Why Aren't These Guys In Jail?" In response to the question posed by the chapter title, he cited a number of reasons—including lax reporting by banks of attempted swindles, statutory loopholes, and a lack of interest by investigators and prosecutors. Many of these difficulties have been corrected in the last 10 years. He also cited, though, the minimal coordination that existed at the law enforcement level and the need to go to a hundred different sources to get information on even the most well established confidence artists. This difficulty has not yet been corrected.

We have, over the last few years, begun to develop an increased appreciation of the shortcomings of our past efforts to deal with this form of crime. It is manifest that a principal shortcoming is the lack of an efficient means of exchanging information about white-collar criminals whose crimes, either simultaneously or sequentially, affect victims in several jurisdictions. This hinders, to some extent, investigations of major procurement frauds and bank frauds. It hinders, to a significant extent, investigations of more direct exploitation of individual citizens on a large-scale, systematic basis.

The Federal Bureau of Investigation and other agencies have found that a small number of criminal offenders are responsible for a disproportionate amount of the fraud occurring in this country. The information about these offenders, however, is scattered among the numerous jurisdictions in which they have operated. There is today no system for making that scattered information available to the investigators in need of it.

Today, exchanges of information among investigative agencies are attempted in accordance with the various laws and regulations applicable to the different jurisdictions; but they are accomplished only on an ad hoc, hit-or-miss basis. The attempts possess none of the routine efficiency that is required for uncovering sophisticated offenses. As an example, if an officer of one police department investigating a financial swindler wishes to learn whether another police department has any information about his operations, the officer can telephone the other department to determine if it has an open investigation on the suspected offender. But a thorough investigation of such police records would require another 60,000 phone calls, an obviously impossible and inappropriate task. It can be rendered possible and appropriate, however, by technology.

Recognizing the above facts, the Economic Crime Council of the Department of Justice recommended the development of the Index we are discussing today. The Council is comprised of 21 U.S. attorneys and other selected officials of the Department of Justice. It was founded in May 1983 as an advisory body to the Department on matters related to economic crime enforcement. In December 1983, the Council discussed the fragmented nature of law enforcement in dealing with career white collar criminals, and concluded that there was a serious need for some form of Economic Crime Index by which the FBI, the Securities and Exchange Commission, the U.S. Postal Inspection Service, the Commodity Futures Trading Commission, and State and local law enforcement agencies could ascertain whether other agencies were conducting investigations of the same suspected offenders.

On further review of the Council's proposal, we have found it to be well based. In view of the fact that nationwide fraud schemes are being perpetrated with the latest in communications, marketing, and computer technology, it is not only anomalous, but we believe that it is embarassing and intolerable that law enforcement officials are left without an effective ability even to ascertain if a police department in a nearby city, or if the FBI or the Postal Inspectors, are investigating the same person or scheme. It is for that reason that the Department is determined to develop a mechanism whereby various Federal, State, and local law enforcement agencies examining a series of offenses can at least learn quickly of the existence of parallel investigations. This Economic Crime Index would be a pointer system by which the Nation's law enforcement agencies could ascertain whether other agencies were conducting investigations of the same individual, the same group of individuals, or the same scheme. Once two agencies learned of their common interest, they could proceed in the normal manner, through existing legal and administrative procedures, to exchange information concerning their two investigations. Although it would be only a simple, basic system, once the concept is fully developed and put in place it should prove to be very effective.

It is our view that such a system is practical, lawful, and reasonable. It will materially assist in the effectiveness of the Federal and State efforts against white collar crime, without in any way infringing upon other legitimate private or governmental interests. We are confident that, upon examination, this subcommittee will find it to be a balanced and responsible approach, and we look forward to the subcommittee's future support in our efforts to reduce the adverse impact of white collar crime upon the citizens of our Nation.

Thank you, Mr. Chairman, and I would be happy to answer any questions that you may have.

[The statement of Mr. Jensen follows:]

Department of Justice

STATEMENT

OF

D. LOWELL JENSEN
ASSOCIATE ATTORNEY GENERAL

BEFORE

THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

ECONOMIC CRIME INDEX/NCIC

ON

APRIL 25, 1985

Mr. Chairman, and Members of the Subcommittee:

I appreciate this opportunity to make clear the position of the Department of Justice on the problem of certain aspects of economic crime in this country, and to discuss the proposed Economic Crime Index. Let me state at the outset that we view the Index primarily as a way to take law enforcement coordination out of the horse-and-buggy days. Just as modern technology can be used to carry out criminal schemes employing fraud, stealth, and cover-up, it can be used to detect, apprehend, and successfully prosecute the criminals among us.

The Problem of White Collar Crime

This country faces an economic crime problem of disturbing dimensions. Moreover, we often confront a tendency to dismiss so-called white collar crime as some lesser form of criminality. When the subject is touched upon in our fiction, we often find an inventive, glamorous figure who steals only from the dishonest, the rich, or the greedy. When the subject is touched upon in more serious tomes, it tends to be approached from the opposite direction -- a presentation of abstract concepts and statistics only distantly related to the lives of individual citizens.

The reality is, of course, that white collar crime affects innocent people who frequently can ill afford to bear the loss, and whose lives are sometimes affected very directly and very tragically. Among the true victims are:

- the 100 elderly citizens in Florida who lost their life savings on a retirement village real estate scam, half of whom also lost their self-sufficiency as a consequence and were made destitute;
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The Problem of Investigating White Collar Crime

The problem of white collar crime is compounded when we realize that it is extraordinarily difficult to investigate successfully. Since it frequently succeeds by deception, cover-up, and record manipulation, its victims may be unaware that a crime has been committed until long after the event. Its practitioners are quick to grasp the advantages of employing both the latest advances in business techniques and the latest advances in supporting technology. Moreover, the operators may work in one location, while their victims may be in another city, another state, or even another nation. In fact, we have had convicted offenders tell us that they deliberately set up operations in areas separate from the victims in order to disrupt the normal investigative process where the offender and the victim are within the same jurisdiction. Consequently, when white collar crime occurs it is often difficult to detect, and when it is detected it is often difficult to obtain all the evidence necessary to prove the offense beyond a reasonable doubt. As a result, white collar crime poses special investigative challenges at all levels -- federal, state, and local. It also presents a special need for effective inter-agency coordination.

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We have over the last few years begun to develop an increased appreciation of the shortcomings of our past efforts to deal with this form of crime. It is manifest that a principal shortcoming is the lack of an efficient means of exchanging information about white collar criminals whose crimes, either simultaneously or sequentially, affect victims in several jurisdictions. This hinders, to some extent, investigations of major procurement frauds and bank frauds. It hinders, to a significant extent, investigations of more direct exploitation of individual citizens on a large-scale, systematic basis.

The Federal Bureau of Investigation and other agencies have found that a small number of criminal offenders are responsible for a disproportionate amount of the fraud occurring in this country. The information about these offenders, however, is scattered among the numerous jurisdictions in which they have operated. There is today no system for making that scattered information available to the investigators in need of it.

Today, exchanges of information among investigative agencies are attempted, in accordance with the various laws and regulations applicable to the different jurisdictions, but they are accomplished only on an ad hoc, hit-or-miss basis. The attempts possess none of the routine efficiency that is required for uncovering sophisticated offenses. As an example, if an officer of one police department investigating a financial swindler wishes to learn whether another police department has any information about his operations, the officer can telephone the other department to determine if it has an open investigation on the suspected offender. But a thorough investigation of such police records would require another 60,000 phone calls, an obviously impossible and inappropriate task. It can be rendered possible and appropriate, however, by technology.

The Proposed Economic Crime Index

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United States Attorneys and other selected officials of the Department of Justice. It was founded in May of 1983 as an advisory body to the Department on matters related to economic crime enforcement. In December of 1983, the Council discussed the fragmented nature of law enforcement in dealing with career white collar criminals, and concluded that there was a serious need for some form of Economic Crime Index by which the FBI, the Securities and Exchange Commission, the U.S. Postal Inspection Service, the Commodity Futures Trading Commission, and state and local law enforcement agencies, could ascertain whether other agencies were conducting investigations of the same suspected offenders.

On further review of the Council's proposal, we have found it to be well based. In view of the fact that nationwide fraud schemes are being perpetrated with the latest in communications, marketing, and computer technology, it is not only anomalous -- we believe that it is embarrassing and intolerable -- that law enforcement officials are left without an effective ability even to ascertain if a police department in a nearby city, or if the FBI or the Postal Inspectors, are investigating the same person or scheme. It is for that reason that the Department is determined to develop a mechanism whereby various federal, state, and local law enforcement agencies examining a series of offenses can at least learn quickly of the existence of parallel investigations. This Economic Crime Index would be a pointer system by which the Nation's law enforcement agencies could ascertain whether other agencies were conducting investigations of the same individual, the same group of individuals, or the same scheme. Once two agencies learned of their common interest, they could proceed in the normal manner, through existing legal and administrative procedures, to exchange information concerning their two investigations. Although it would be only a simple, basic system, once the concept is fully developed and put in place it should prove to be very effective.

It is our view that such a system is practical, lawful, and reasonable. It will materially assist in the effectiveness of the federal and state efforts against white collar crime, without in any way infringing upon other legitimate private or governmental interests. We are confident that, upon examination, this Subcommittee will find it to be a balanced and responsible approach, and we look forward to the Subcommittee's future support in our efforts to reduce the adverse impact of white collar crime upon the citizens of our Nation.

Mr. EDWARDS. Thank you, Mr. Jensen.

I recognize the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. It is a pleasure to welcome Mr. Jensen to our hearing this morning.

Mr. Jensen, early in your statement you alluded to four types of fraudulent schemes. One must agree that it is important that we have adequate powers to deal with this sort of thing. But taking each case separately, could you explain how the ECI would have helped in preventing or detecting these particular frauds?

Mr. JENSEN. If you look at the first, Congressman, you have a situation where offenses are committed over a wide range of jurisdictions. One of the things that happens, of course, is that we focus our law enforcement jurisdiction and our resources in a way that is dependent upon federalism and the division of authority in each jurisdiction within a given State. If a criminal escapade now spreads out—and, as I point out, the victims are in multiple jurisdictions—it breaks apart what we might say is a normal investigative process, where the one police agency has complete review of all the information that is relevant to that particular scheme. When you now spread out, the victims are in different jurisdictions, and we have victims of this offense who are not in the same jurisdiction as the offender. And we have separate police jurisdictions, in effect, investigating the same crime.

My point is that the flow of information is critical for investigative timing and for investigative productivity. If we can provide a timely mechanism by way of a pointer system like this index, we can allow multiple jurisdictions which have victims who come into their police departments, and now tell the police department about the crime that occurred to them, to match the fact that this scheme is one that is widespread and that is multijurisdictional, and allow us——

Mr. Kastenmeier. Except, the first case you cite, involving 100 elderly citizens in Florida, seems exclusively within the state of Florida. Consequently it would not be appropriate for a nationwide index; at least I don't see, superficially, the relevance of a multijurisdictional approach to the scheme involving these particular Florida citizens.

Mr. Jensen. I think your point is well taken in the sense that this kind of index could be done by a given jurisdiction—a county could do it, where they have multiple police agencies in a county, or a State could do that. Florida has very, very good information systems. They could have this kind of a thing in their particular State, that's true. The problem, of course, is that there are any number of schemes that are multi-State, and what we are talking about is, unfortunately, the schemes that spread across those jurisdictional boundaries. That's what we're concerned about.

Mr. Kastenmeier. You also recited the fact that, in the case of white-collar crimes, the victims may be totally unaware that the crime has been committed until long after the event. I think that is essentially correct.

But how would the ECI address this problem? Does it have any relevance to that at all?

Mr. Jensen. It does in the sense that once the discovery is made that you've been victimized, then, in the normal course of events, the victim goes to the proper authorities and says, "This is what has happened to me, these are the people who have done it."

Now you put in motion the investigative process. It may have been a long time from the original event, the original scheme whereby a franchise was sold or whereby some representations were made that are now found to be fraudulent. The difficulty with these is that they go on over a long period of time. Confidence men do not limit themselves to a single victim; what happens is a continuum of confidence schemes, and you find that the discovery of this may be in the middle of the scheme being perpetrated in other places and over a period of time.

At any point where you can interrupt that, and can get timely information that then goes back out, you may have something that is raw in the sense of information that has not been developed in other areas, but that alerts us that we now have a criminal kind of context that we have to look at. Basically, what I am saying, is that there is a delay factor, but that delay factor fits within a whole scheme of criminality, and it can be used, if it's used in a timely fashion, to prevent the criminality that would occur after that discovery.

Mr. Kastenmeier. One last question, Mr. Chairman.

This is apparently a discrete index or file within the NCIC. There are already, perhaps, a dozen other categorical such as stolen property and missing persons, guns, and so forth.

Do we have any notion of whether there are others that are on the horizon that will need to be added, and whether this will make the system more complicated or possibly even too complex?

Mr. **Jensen**. Yes.

Mr. **Kastenmeier**. In other words, can we get an overview of how this particular addition would affect the system as a whole, looking forward into the future?

Mr. **Jensen**. I would defer, of course, to the people who are really responsible and directly knowledgeable about the NCIC system, itself, who are here as witnesses from the FBI. There is a concern that you might overload your system and become counterproductive. That is the kind of thing that one, from a technical standpoint, is concerned about. And we would never want to do anything that degrades the present NCIC system, because it is a very effective, very important system.

That would be a part of the consideration and development of any file, and we would not want to take any step that would degrade existing capacity. But I don't think that's a problem with this; this could be added to that.

The technical experts can be of more assistance to you, but I don't see that as a problem. If it is a problem, we won't do it. But if it's not a problem, we'll simply add it as a file.

Mr. **Kastenmeier**. Thank you.

Let me, Mr. Chairman, just make this comment. We had testimony yesterday that the use of the computer system can sometimes, apparently as a matter of systemic error, produce abuses and false arrests that, obviously, we're all concerned about. Now, I don't know whether this proposed index would add to or detract from that problem, but this committee certainly continues to be concerned about that.

Mr. **Jensen**. I think that is absolutely correct; it is a concern. And that concern has been a part of the ongoing design and of the monitoring and of the actual implementation of the NCIC system, itself. We always have to be concerned with the reliability of our data; that's implicit in any flow of information.

I think that the record of NCIC—while there are some errors that have occurred—is exemplary in that regard. This particular system does not really raise some of those issues, in that we're not talking here about other than providing a system that will be simply a pointer system that would allow the normal flow of information once the point has been made in the disparate agencies. So, I don't really think that this one raises those kinds of issues.

Mr. **Kastenmeier**. Thank you, Mr. Chairman.

Mr. **Edwards**. Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much.

Mr. Jensen, am I correct in assuming that an entry of data into the ECI would indicate that an investigation is going on either by State or Federal law enforcement?

Mr. **Jensen**. That is the concept. Now, the specific way in which we develop it—and, once again, the experts from NCIC are here—in terms of how we would begin a startup system, we would probably begin with a startup system that was limited to Federal agencies and not include State and local agencies, and see how effective it was and how it could be worked. But our contemplation and concept is that it should move out, and that we should have those entries coming in from State and local agencies, as we do in the other range of areas, as Congressman Kastenmeier said. The entries that go into all those files now are coming from State and local agencies.

Mr. **Sensenbrenner**. Using the example of the hundred elderly citizens in Florida who were bilked out of their life savings in the retirement village, say there was an entry in that, either put in there by Federal or State law enforcement—I'm just trying to see, conceptually, how it would work.

If the entry was in the ECI, and say a senior citizen in Arkansas went into a local district attorney's office, claiming to have been bilked out of their life savings with another retirement village scheme in that State, if this were fully operational could, then, the local district attorney in Arkansas plug in to see if there were any kind of similar scams, to ascertain if there was a pattern or practice or if there was an investigation going on?

Mr. **Jensen**. Not in that strict sense, in that this does not contemplate going in and opening up inquiries into the substance of investigations. This would, as I say, allow you to get to parallel investigations that are going on contemporaneously.

If you had this real estate investment scheme that was going on, where a single offender was using a real estate scam in different States, the point is that anyone who had begun an investigation, had it been opened up on that criminal conduct, would be able to make an entry into the system. If there was already in the system, resident, a parallel investigation of the same subjects, then the system would simply identify that and allow the people to share that information.

Mr. **Sensenbrenner**. So, it would be by subjects as well as by names of people who were under investigation?

Mr. **Jensen**. It would be by subjects of investigations only.

Mr. **Sensenbrenner**. It would be subjects of investigations.

Mr. **Jensen**. Yes.

Mr. **Sensenbrenner**. So that you would devise some kind of a way to look at parallel investigations of similar or identical——

Mr. **Jensen**. That is correct.

Mr. **Sensenbrenner** [continuing]. Real estate scams, without having specific name of person or persons who are being investigated.

Mr. **Jensen**. No. It would be by the subjects of the investigation. Let us say that the investigation in police agency A was of a real estate investment scheme using a specific area of real estate for the supposed investment, and it was being run by someone who entitles himself by a certain corporate name or business name, and by someone who had a specific individual name. That would be the subject of the investigation. When that's entered, if you now find that there is a parallel investigation in another jurisdiction of the same subject with the same kind of business entity, then you would simply notify the two investigative agencies that this is going on.

Mr. **Sensenbrenner**. So, if the quick-buck real estate agency in Florida was perpetrating a scam that was under investigation down there, and somebody in Arkansas comes in with a flyer and a pitch from the quick-buck real estate agency there, you'd put the name in and——

Mr. **Jensen**. That's correct. You'd simply put them together, and they can do what they would have done if they had randomly called one another.

Mr. **Sensenbrenner**. OK. Thank you, Mr. Chairman.

Mr. **Kastenmeier**. In terms of the history of this, in a letter of October 26, 1984, to the Attorney General, the committee asked for copies of any memoranda of the proposed ECI that were circulated to the Economic Crime Council. The departmental reply of March 13, last month, indicated that the proposal was initially approved by the council at its December 1983 meeting, that costs and alternatives were discussed at the May 1984 meeting, and that the proposal was strongly re-endorsed at the January 1985 meeting. Yet, in response to this committee's request for documents on the proposal, you provided the committee with a single two-page document, distributed for use at the December 1983 meeting, that contained only one sentence on the ECI proposal.

Does this mean that the council considered a proposal to create an ECI at three meetings and strongly re-endorsed the proposal on January of this year on the basis of that one sentence in the 1983 report?

Mr. **Jensen**. No. There was a discussion at that Council meeting, obviously. The Council members got together—and these are the U.S. attorneys who have responsibility for regular Federal enforcement—and the subject was discussed. That was the only document—I guess maybe it's a question of understanding what was being requested. The only material that had been sent to the members of the Economic Crime Council was that. There was full-going discussion about this at council meetings, though, you're correct about that.

Mr. **Kastenmeier**. On paper have there been any other descriptions or discussions or analyses of the proposal that you could share with the committee?

Mr. **Jensen**. No. These were discussions at the council about the pragmatic problems that are being faced by prosecutors in their handling of investigations by the Bureau. The development of the specific experimental proposals now will be within the NCIC structure itself; but, of course, that's a rigorous structure where you go through an advisory board and specific proposals are put on the table and debated. What we were talking about is essentially conceptual in that we think this pointer system can work. And we asked that that then be developed in a technical sense.

Mr. **Kastenmeier**. In other words there is no paper record of the council's treatment of this question——

Mr. **Jensen**. Only by the references in our minutes. We don't really transcribe. These are free-flowing kinds of discussions about where we are in terms of trying to handle problems of enforcement.

Mr. **Kastenmeier**. Thank you, Mr. Jensen.

Mr. Chairman.

Mr. **Edwards**. In other words, Mr. Jensen, the Economic Crime Council of the Department of Justice, in its recommendation, that's an oral recommendation, or if it is written it is on one page.

Mr. **Jensen**. Yes.

Mr. **Edwards**. Now, Mr. Jensen, the FBI is going to spend, I believe, around $2 million on an in-depth study of the NCIC by a responsible outfit called MITRE.

Mr. **Jensen**. Yes.

Mr. **Edwards**. And it's going to take 2 years. And at that time an examination, and study, and reappraisal of the NCIC would be made by the FBI, and, I'm sure, the Department of Justice.

But you're going to go ahead with this major change in the NCIC before you have the study; is that correct?

Mr. **Jensen**. Well, the study is one that would be an ongoing study about the entire system, itself—its capacity, its utility, how it can be used more effectively. We would not want to hold up on any kind of rational development of NCIC while that study is going on.

Now, the study has been on for some time, and we've added, say, the missing persons file while the study is in progress. We would not want to hold up on utilizing a very important technology while that study is on. It's a parallel study of where we have to be and what the capacity and usefulness of the NCIC system ought to be.

Mr. **Edwards**. On page 2 of your testimony you give an example of patients whose proper treatment for cancer and other diseases was delayed for a protracted period while they pinned their hopes on the efficacy of a wonder machine touted by a medical quack.

Does that mean that you'd have a section of the NCIC on a nationwide basis of suspected quacks?

Mr. **Jensen**. No. These are examples, generic——

I shouldn't say that as quickly as that. Let's put it this way. Ultimately, when the system is developed and after it has been tested through in terms of how we could use it in a most efficient way, it may very well be that we would enter the subject of an investigation of someone who was, in fact, selling wonder machines in various jurisdictions, and, hopefully, identify him quickly enough so that we would stop the wonder machines from going on to unsuspecting victims who would be victimized by the continuing criminality.

Mr. **Edwards**. I understand. So, if the word gets around in the police department that there is a quack in town selling wonder machines, then that would go into the NCIC, in the event he travels around the country.

Mr. **Jensen**. By word, I would say in a sense, yes. If there were an investigation opened on a specific victim, who now came in and identified a subject, and that subject was under investigation, that would be what we contemplate putting in.

Mr. **Edwards**. Well, then, have you worked out rules for the threshhold for entry into the NCIC of people who are suspected of criminal activity but who have not been convicted?

Mr. **Jensen**. No, we haven't gotten to the point of that definition. A good deal of this is simply conceptual, as you see. And I think that in the ongoing testimony you'll see what is proposed is an experimental system that would be a part of Federal investigations of specifically denominated areas of investigation—the titles of the

United States Code that have been involved, the agencies that are involved—and that level of definition would be part of our start-up in terms of such a system.

Ultimately, we would get to other formats in terms of how we would constrict the entry, and we would obviously constrict the entry to any situation where there would have to be an entry which was justified by an underlying, legitimate, ongoing investigation by a regular police agency in the country.

Mr. **Edwards**. Well, the sheriff of some small town in Nevada who had a political grudge against somebody could put the name of that person in there. What review process would take place? How would the computer know that it's just a political grudge?

Mr. **Jensen**. It is possible that a police agency could make a false entry, and you might have somebody who was the subject matter of an entry who was completely innocent. However, this system has an interesting kind of a safeguard in that alone it doesn't mean anything; the next entry has got to come from another jurisdiction, and the other jurisdiction has got to put in an identical entry. I don't think we're going to run into too many situations of multiple innocence.

Mr. **Edwards**. Well, you do understand, Mr. Jensen, that this is a major change in the NCIC; isn't that correct?

Up until a short time ago it was just generally public information in the NCIC. Then the first change was made with missing persons. That's not public information, it's not an indicted person, there's not a warrant out. But that is not a serious matter because the missing person quite generally would be willing to have his or her name in it.

The next major change was the missing children, and this subcommittee was able to write a bill that I think was very suitable, and, with a great deal of difficulty, was able to keep out of the law the provision that the other body put in, so that any mother and father could go into any FBI office and enter into the NCIC any name they wanted. We required that the name of the missing child be entered only into the system by the local police or the FBI.

Mr. **Jensen**. Yes, I understand that.

Mr. **Edwards**. We do have interest in the integrity of the NCIC.

Mr. **Jensen**. Yes.

Mr. **Edwards**. I'm sure you understand that.

Mr. **Jensen**. Yes, I understand that.

As a matter of fact, we totally agree with the way in which that was structured, in that we did not want to see any data entered into the NCIC that was not supported by a police investigative entry.

I may point out that the NCIC system, over a period of time, has included investigative material that was not the subject of court orders. All of the material on stolen property—the automobiles, guns, other property—is investigative material, and is not a part of court process.

Mr. **Edwards**. Yes, we understand that; but it is not a human being, it is not a person.

Mr. **Jensen**. It deals with specific articles.

Mr. **Edwards**. Yes.

Mr. Jensen. But the missing children file and the Secret Service file that was alluded to before are files that have already been initiated—files that depend upon investigative material that deals with individuals.

Mr. Edwards. The problem that we had, which we studied in some depth about the Secret Service provision, was that it very clearly was a tracking system, whereby the central computer in Washington could track the travels and location of a suspected person who might commit a crime, as this person moves across the United States. I'm glad to hear that it's working well. We are continuing to monitor it, of course.

The ECI is even more of a tracking system, isn't that correct. You're going to be able to track the movements of people who are suspected, who might commit a crime, throughout the United States?

Mr. Jensen. No, this system would not permit a police agency to inquire. I think there is a distinction between this and systems that permit direct inquiry. This is an entry system where you have only the ability to make a formated entry; it doesn't permit you to inquire into that file, it simply allows you to enter some data. Then, when the system identifies the fact that identical data has been entered, a separate notification goes out. So, it doesn't permit tracking by inquiry.

Mr. Edwards. Well, the FBI could, if they choose——

Mr. Jensen. The FBI knows that.

Mr. Edwards [continuing]. To do so, would have material that would aid in tracking.

Mr. Jensen. Well, it would be the same sort of material that comes in on reports of criminality now; to the extent they're identified it would be information that would go into the file. I don't think there is any contemplation of any kind of tracking effort that would be imposed beyond that. This wouldn't change the jurisdictional responsibility of the FBI in any way.

Mr. Edwards. No, but the FBI could get a printout from the NCIC of a person suspected of criminal activity, of future criminal activity, and the printout would show various locations of the country where this person has been or is or might be at the present time.

Mr. Jensen. Well, it may show that there were investigations of the same subject in multiple jurisdictions contemporaneously. That is correct. It wouldn't show location and it wouldn't be a tracking system in that sense.

Mr. Edwards. Right.

And what insurance would there be, since obviously you are not going to be using fingerprints to any great extent, which is the exact science of identification——

Mr. Jensen. Yes.

Mr. Edwards. What provisions are going to be made if you're relying on name, year of birth, sex, race, and so forth, that somebody is going to get into the system who shouldn't be there?

Mr. Jensen. Well, as I said, there is the unfortunate kink in any information flow that some people can submit material that is not correct into the information system. And it may be that something is submitted into the system that is not correct. This particular system, however, does not carry with it any followup in terms of police action other than investigative opportunities by linking in the normal process of investigation.

You wouldn't be able to go from what was entered in this system to an an arrest. That's not possible. You wouldn't be able to go into any investigative jurisdiction that you didn't already have over that particular subject matter. All you would have in the system is, as I say, a formated entry of parallel investigations, and what would happen after that would be a result of the legal constructure and the way in which investigations are carried out jointly now.

Mr. **Edwards**. Thank you.

My last question is this: Tell us a little bit about what you envisage as the future of the NCIC. There's been some talk in your department and in the FBI, I believe, of expanding the NCIC still further, with suspected terrorists and associates of terrorists, for example.

Is that kind of an expansion contemplated?

Mr. **Jensen**. No, there's no specific contemplation of that nature.

If I may make just a couple of very broad comments, Mr. Chairman. One, at the outset you mentioned something about bank fraud, and I'd like to put something very quickly on the record in that respect. As you perhaps know—and I would like to submit for you what we've done in terms of following up that really difficult problem—we've had a series of meetings with the regulatory agencies, and we've identified some problems of information flow, and we have now come up with agreements with all of those regulatory agencies that are going to go a long way toward solving that.

If you would like I could submit something on that.

That's a discretely different investigative kind of track from what we're talking about here. We obviously need to do a better job about following that information. That is not what this system is about. It is another kind of investigative responsibility, I think, that we've taken on.

As far as NCIC is concerned, the way we see it in its broadest sense is as an effective means of communications. The lifeblood of an investigation and lifeblood of the ability to investigate and prosecute is the flow of information. And if we can devise methods whereby that information is now passed on in a timely, efficient manner, and they do not intrude in fashions that are not tolerable for a society, we think NCIC and its availability in terms of communications in a timely and an efficient manner—that has been so dramatically useful for the use of warrants in this country—can be used for other investigative opportunities.

And we're going to explore those. As we do, we always want to do it in a context assuring that it's a responsible use of that system. What we basically say to ourselves is that there is a need for us to use every technology that we can to prevent the kind of victimization that goes on. And in a broad sense, we're going to use NCIC as it becomes available in those areas. That is traditionally the kind of investigative opportunity or product that can be used by technology, in a computer system.

Mr. **Edwards**. That's very helpful.

I see that the Customs Department has a file, and recently, to the dismay of the Prime Minister of Canada, refused to allow a Canadian officer who is also a Marxist to come into the United States.

What would prevent the FBI from adding those names out of the Customs Department's file to the NCIC?

Mr. **Jensen**. That gets into this whole area about the NCIC and its mission. We see it as in support of the direct responsibilities of the FBI and direct responsibilities of law enforcement investigation in the country. I don't really see that as a part of any proposed expansion of NCIC at all. There are, already, any number of telecommunications systems that are out there like that, but they're separate and their missions are separate.

Mr. **Edwards**. But once you open the door for the NCIC, then it would be strictly up to the Attorney General or the FBI to add any category that they wanted.

Mr. **Jensen**. Through the process that we're talking about here, and through this kind of discussion. We don't contemplate doing anything that is not properly available and thoroughly thought through. Our perspective on this is: We have a responsibility to use technology in the most socially responsible way, and that's what we'll do.

Mr. **Edwards**. Thank you.

Mr. Kastenmeier and counsel?

Mr. **Kastenmeier**. Just a comment, Mr. Chairman, with respect to the very useful colloquy between you and Mr. Jensen with respect to the credibility of the system and the information that goes into the system, the care that needs to be taken, and Mr. Jensen's comment as to the necessity for reliability and verification of the material that goes into the system.

My comment is that this subcommittee and its members, as well as the FBI and the Justice Department, were very shabbily treated in a movie called "Adam" on that very issue, from the advocate's or producer's standpoint. That movie is to be shown by NBC again this coming week.

Mr. **Edwards**. It's apparently going to be shown as often as the "Wizard of Oz."

Mr. **Kastenmeier**. The point is that these considerations are not addressed in that movie.

Mr. **Jensen**. No, that's correct.

And I think we learned from that. I think that that movie is now an anachronism in that that context no longer pertains. And people ought to understand that we learned from this situation, and sometimes we learn from docu-dramas, too.

Mr. **Kastenmeier**. Thank you, Mr. Chairman.

Mr. **Edwards**. Mr. Dempsey.

Mr. **Dempsey**. Mr. Jensen, turning to the list on page 2 of your testimony, in the first example, the example of the real estate scam, if the Quick Build Co. in Florida was suspected of engaging in a real estate scam, Florida authorities would enter their name into the economic crime index.

Now, if the same perpetrators of that scam decided to bilk the people in Arkansas, for example, they would only get into the ECI if they used the same corporate name, Quick Build, or if they used their same personal names.

Mr. **Jensen**. That is correct.

Mr. **Dempsey**. So if criminals who participate in these crimes change their names from State to State, they would be able to avoid detection.

Mr. **Jensen**. No question. There's no question about the fact that people do that and that names change. However, that is a kind of problem that exists in any investigative process—when you ultimately have to come back through a whole series of false statements, false names, false identities, down to unique identifiers to know who you're dealing with. That's a part of the regular investigative process.

Mr. **Dempsey**. But in terms of the efficacy of this system, a person could frustrate that simply by using a different name in each jurisdiction.

Mr. **Jensen**. It also frustrates the scheme. You've got to start the scheme over every time you put a new entity in; so if we could now fragment every scheme so that every time you had a victim you had to come up with a new business kind of scheme, we would be doing ourselves a lot of good.

Mr. **Dempsey**. But if you had Quick Build already, and if you already were investigating Quick Build, and if you had evidence on Quick Build, regarding their activities, couldn't you then pursue them under criminal statutes at that point?

Mr. **Jensen**. Certainly.

Mr. **Dempsey**. The fact that they were operating in another jurisdiction would not, necessarily, add to your investigation in Florida.

Mr. **Jensen**. Oh, it certainly would. The whole point is that the knowledge that there are parallel investigations adds to your information pool. And it may very well be that the information that has been developed in Arkansas was not developed in Florida, or vice-versa, and if it's now added to an investigative pool if allows you to take action you couldn't before. You simply don't know if it's nothing——

Mr. **Dempsey**. It would allow you to take action only if there was a federal crime. Certainly if there was a Florida crime involved, there might be limitations upon the ability of Florida authorities to use Arkansas information.

Mr. **Jensen**. Yes, this would not change any of your jurisdictional restraints. This would only be the kind of thing that would add information to increase your ability to use your existing jurisdiction powers.

Mr. **Dempsey**. And if it's already a Federal investigation, couldn't the federal agencies involved exchange the information, themselves, without the presence of an ECI?

Mr. **Jensen**. The point is that this is a method for them to exchange information. You could do the same thing—you could do manual searches and make phone calls in the Federal system. All we're talking about is allowing this kind of technology to exchange that information in the Federal system also.

Mr. **Dempsey**. Excuse me?

Mr. **Jensen**. See, you can now. An agency, a Federal agency can—though it doesn't make any difference whether it's a Federal investigation in that instance. If one Federal agency is investigating, and it happens that there's a parallel investigation of the same subject, by random contact, now, you could find that out. This provides you with a mechanism to do it in a fashion that is not random and not as inefficient as that.

Mr. **Dempsey**. What is the Justice Department's FACT system, the fraud and corruption tracking system? Could you describe that?

Mr. **Jensen**. The FACT system is one where a referral is made from a Federal investigative agency to a U.S. attorney for followup on a case; where there may be a referral coming from the Department of Energy, or Department of Agriculture, or whatever it may be; where an investigation has gotten to the point where it has to be referred to the Department of Justice for action. The FACT system is designed to allow us to know of those referrals, to time them and to give some kind of ability to manage them.

Mr. **Dempsey**. Are those limited to fraud against the government?

Mr. **Jensen**. They're Federal offenses, yes.

Mr. **Dempsey**. Fraud against the Government or Federal offenses against private individuals?

Mr. **Jensen**. It's possible that there will be private individuals involved. In many instances the Federal agency doing the investigation would have an investigation that involves just individuals and not another Federal agency.

Mr. **Dempsey**. I guess my question was whether the Florida case would have gotten into the FACT system.

Mr. **Jensen**. No, it would not. It would not. The FACT system is totally limited to Federal investigations.

Mr. **Dempsey**. In the Florida case, was that a State investigation or a——

Mr. **Jensen**. A State investigation.

Mr. **Dempsey**. Again, it seems to me that either it's a State investigation, in which event what is going on in another State may be very limited value, if you pursue the people in Florida under Florida law, or it's a Federal investigation, in which case Federal investigators can communicate with each other through internal Federal data-sharing capabilities without the use of the NCIC.

Mr. **Jensen**. No. It's possible. What we're talking about is use of the most effective technique to share that information, that's all.

Mr. **Dempsey**. But again, how would it be effective?

I'm still trying to get that.

Mr. **Jensen**. The point is that Federal agencies don't know of parallel investigations by other Federal agencies simply by osmosis. It doesn't——

Mr. **Dempsey**. But isn't that a failure, though, within the Federal system that doesn't——

Mr. **Jensen**. Certainly.

Mr. **Dempsey** [continuing]. Implicate the NCIC?

Mr. **Jensen**. It doesn't.

Mr. **Dempsey**. It does not implicate the NCIC.

Mr. **Jensen**. It either can or it can't. You use whatever technology is available. You could build other systems. You could go ahead and put up separate systems, but there's no sense in putting up separate systems if you already have one available for use.

Mr. **Dempsey**. But you would have to, at this point, establish a new file in the system, and there are the collateral ramifications regarding the use of a system that's available as broadly as the NCIC. I think that's one of the concerns.

Mr. **JENSEN**. That's why the system is designed as a pointer system.

Mr. **DEMPSEY**. Other than the FACT system, does the Justice Department have any other computerized data bases on white-collar crime?

Mr. **JENSEN**. Well, we have various case management systems, for the U.S. attorneys—within their offices. We have put together something you may be familiar with, PROMA systems, that were put into U.S. attorneys' offices around the country. They have their own case management systems, and we're building the ability to share that information among U.S. attorneys.

We have a reporting system right now. There is a docket and reporting system that comes back into Washington from all the U.S. attorneys. It's less efficient than it ought to be, and we're going to build a much better system for knowing what's going on by U.S. attorneys in their investigations and prosecutions. It should allow us to have a much better picture of what's happening around the country. So yes, we are concerned with, and are building, systems that will allow us to look at that conduct.

Mr. **DEMPSEY**. Am I right in assuming that the authority for the creation of the economic crime index is found in 28 U.S.C. 534?

Mr. **JENSEN**. Basically, what we're talking about is looking at how it might be added to the entire authorization picture of the NCIC system, itself— so, all of the authority for that.

Mr. **DEMPSEY**. In some prior instances, legal opinions have been prepared by the Department, discussing the legal authority for the addition of a new file to the NCIC.

Has that been done in this case?

Mr. **JENSEN**. No, it has not been done. It will be done if there is an issue that we think is one that ought to be reviewed. If any issue like that comes up, we would do that. As we develop these sorts of things, there are any number of situations where there is no issue like that. Only if an issue comes up that's necessary to review would we do it.

Mr. **DEMPSEY**. So, to date you have not seen any question.

Mr. **JENSEN**. No.

Mr. **DEMPSEY**. No further questions.

Mr. **EDWARDS**. Thank you very much.

Mr. **JENSEN**. Thank you very much, Mr. Chairman.

Mr. **EDWARDS**. I look forward to seeing you in San Jose in a couple of weeks.

Mr. **JENSEN**. Thank you. I'd like to.

Mr. **EDWARDS**. Next, we are pleased to welcome Mr. Floyd I. Clarke, Deputy Assistant Director, Criminal Investigative Division, FBI; Mr. William A. Bayse, Assistant Director, Technical Services Division; and accompanying him is our good friend, who has testified many times before this subcommittee, David Nemecek, who is NCIC Section Chief, FBI; and one additional person.

Mr. **BAYSE**. Mr. Kier Boyd, Deputy Assistant Director of Technical Services is here, Mr. Chairman.

Mr. **EDWARDS**. We're delighted to have Mr. Boyd here, too.

You may proceed.

TESTIMONY OF FLOYD I. CLARKE, DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION; AND WILLIAM A. BAYSE, ASSISTANT DIRECTOR, TECHNICAL SERVICES DIVISION, ACCOMPANIED BY DAVID NEMECEK, NCIC SECTION CHIEF, AND KIER BOYD, DEPUTY ASSISTANT DIRECTOR, TECHNICAL SERVICES

Mr. **Bayse**. Mr. Chairman, I'd like to read my statement for the record.

Mr. **Edwards**. Without objection, so ordered.

Mr. **Bayse**. Mr. Chairman, we appreciate the opportunity, again, to appear before the subcommittee today, to discuss the National Crime Information Center. The last time I appeared before this subcommittee, on the first of August, last year, we reported to you on our efforts to conduct a comprehensive study to begin a new system life cycle for NCIC to serve nationwide user requirements through the year 2000. We also reported to you regarding the significant initiatives that have been taken by the FBI recently to achieve a new level of record quality and validity in the system.

Notwithstanding the fact that NCIC continues to operate substantially as designed over 17 years ago, attractive cost/performance data processing and telecommunications technologies continue to provide reliable performance averaging approximately 500,000 daily transactions at an average cost of approximately 5 cents per transaction. Recent documentation of the benefits of NCIC utilization far exceed the modest Federal Government expenditure to operate the system. As a result of a study of the results of the utilization of the NCIC vehicle file, for example, over $16 million in stolen property was recovered during a 30-day sample period of NCIC terminal agencies. A similar survey was conducted on utilization of the wanted person file, and the resulting annualized figures for calendar year 1984 documented that over 47,000 wanted persons and 8,800 missing persons were located as a result of utilization of this file. Other recoveries, cases solved, and direct benefits to the public in terms of reduction in crime would supplement these quantified benefits.

I would like to comment briefly on significant initiatives in which we are now engaged in order to provide a high level of NCIC service to the criminal justice community.

The success of the Interstate Identification Index, III, testing to develop decentralized recordkeeping responsibilities at the State level has reached the stage where we will now address the establishment of a national fingerprint file. This national file envisions that the initial arrest fingerprint card for an individual in each State would be submitted to the FBI identification division to establish a pointer in the III index. No arrest or disposition data would be included on that card, nor would subsequent arrest and disposition data be forwarded to the FBI. However, prior to termination of submission of this arrest and disposition data to the national level, we must address alternatives to provide service for those noncriminal justice purposes that now rely on a centralized identification division records service.

Because of variances in State law regarding to whom criminal history records may be disseminated in the noncriminal justice community, alternatives to the current service must be identified. As you know, the FBI provides these records for noncriminal justice purposes only as required by law. Not only are the many and varied Federal Government executive branch agencies dependent upon access to these records, but, likewise, a variety of State statutes require national criminal history record checks for licensing, employment, and other noncriminal justice purposes. We are encouraged by the cooperative spirit in which the States have provided criminal history records among criminal justice agencies during the III testing, and are optimistic that a similar cooperative approach can be applied to address noncriminal justice community needs.

The FBI continues to place a high priority on quality assurance and audit in the NCIC system. We use a multipronged attack through computer editing, record discovery sampling, and user training and system auditing at the State and local level, to accomplish the maximum level of record integrity possible as a result of Federal agencies effort. The upcoming study of NCIC that I mentioned earlier will extend this effort.

The NCIC study is a strategic initiative which directly supports NCIC's long-range goals:

To improve the overall effectiveness of the criminal justice system through responsiveness, effective management, and efficient handling and exchange of documented criminal information.

To support user requirements with cost-effective, timely services and state-of-the-art functionality, reliability and technology within the framework of a new 15-year NCIC system life cycle.

We have established the following as goals in the study:

Form the basis for NCIC strategic planning and development through the year 2000.

Provide for the design of a new generation NCIC system that will provide advanced and expanded functionality for NCIC users.

Initiate a new system's life cycle based on a rigorous analytic approach to building a new system. Specifically, the stucy covers the analysis and design components of the new NCIC system's life cycle.

Provide criminal justice community needs and identify requisite resources to meet those needs.

Develop a prototype of the new system to ensure communication with all our users in the requirements formulation process and simulate future functionality of NCIC.

Provide analyses and evaluations of the future system's functional requirements and the scope of the functions to be supported.

Provide research and assessments of the environment; that is technology, sociological, economic, political, security, privacy, and legal environment, in which NCIC must operate in the future, to the year 2000. This is a particularly important factor in shaping a system architecture which will serve users responsively and be flexible enough to accommodate change throughout the new life cycle.

Identify, develop, assess, and rank proposed alternative systems concepts and designs.

And define Federal computing and telecommunications resources acquisition requirements.

I wish to emphasize that privacy, security, and data integrity, and sensitivity to civil and constitutional rights, are top priority objectives of this new system. We will bring the best expertise and technology to bear in these areas, and our first new prototypes will be focused there.

The support of this subcommittee in this new initiative is appreciated, and I will be pleased to respond to any questions you may have, Mr. Chairman.

[The statement of Mr. Bayse follows:]

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

STATEMENT OF
ASSISTANT DIRECTOR
WILLIAM A. BAYSE

BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
APRIL 25, 1985

MR. CHAIRMAN, WE APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TODAY TO DISCUSS THE NATIONAL CRIME INFORMATION CENTER (NCIC). THE LAST TIME I APPEARED BEFORE THIS SUBCOMMITTEE ON AUGUST 1, 1984, WE REPORTED TO YOU ON OUR EFFORTS TO CONDUCT A COMPREHENSIVE STUDY TO BEGIN A NEW SYSTEM LIFE CYCLE FOR NCIC TO SERVE NATIONWIDE USER REQUIREMENTS THROUGH THE YEAR 2000. WE ALSO REPORTED TO YOU REGARDING THE SIGNIFICANT INITIATIVES THAT HAVE BEEN TAKEN BY THE FBI RECENTLY TO ACHIEVE A NEW LEVEL OF RECORD QUALITY AND VALIDITY IN THE NCIC.

NOTWITHSTANDING THE FACT THAT NCIC CONTINUES TO OPERATE SUBSTANTIALLY AS DESIGNED OVER 17 YEARS AGO, ATTRACTIVE COST/PERFORMANCE DATA PROCESSING AND TELECOMMUNICATIONS TECHNOLOGIES CONTINUE TO PROVIDE RELIABLE PERFORMANCE AVERAGING APPROXIMATELY 500,000 DAILY TRANSACTIONS AT AN AVERAGE COST OF APPROXIMATELY FIVE CENTS PER TRANSACTION. RECENT DOCUMENTATION OF THE BENEFITS OF NCIC UTILIZATION FAR EXCEED THE MODEST FEDERAL GOVERNMENT EXPENDITURE TO OPERATE THE SYSTEM. AS A RESULT OF A STUDY OF THE RESULTS OF THE UTILIZATION OF THE NCIC VEHICLE FILE, OVER $16 MILLION IN STOLEN PROPERTY WAS RECOVERED DURING A 30 DAY SAMPLE PERIOD OF NCIC TERMINAL AGENCIES. A SIMILAR SURVEY WAS CONDUCTED ON UTILIZATION OF THE WANTED PERSON FILE. THE RESULTING ANNUALIZED FIGURES FOR CALENDAR YEAR 1984 DOCUMENTED THAT OVER 47,000 WANTED PERSONS AND 8,800 MISSING PERSONS WERE

LOCATED AS A RESULT OF UTILIZATION OF THIS FILE. OTHER RECOVERIES, CASES SOLVED, AND DIRECT BENEFITS TO THE PUBLIC IN TERMS OF REDUCTION IN CRIME WOULD SUPPLEMENT THESE QUANTIFIED BENEFITS.

I WOULD LIKE TO COMMENT BRIEFLY ON SIGNIFICANT INITIATIVES IN WHICH WE ARE NOW ENGAGED IN ORDER TO PROVIDE A HIGH LEVEL OF NCIC SERVICE TO THE CRIMINAL JUSTICE COMMUNITY. THE SUCCESS OF THE INTERSTATE IDENTIFICATION INDEX (III) TESTING TO DEVELOP DECENTRALIZED RECORD KEEPING RESPONSIBILITIES AT THE STATE LEVEL HAS REACHED THE STAGE WHERE WE WILL NOW ADDRESS THE ESTABLISHMENT OF A NATIONAL FINGERPRINT FILE. THIS NATIONAL FINGERPRINT FILE ENVISIONS THAT THE INITIAL ARREST FINGERPRINT CARD FOR AN INDIVIDUAL IN EACH STATE WOULD BE SUBMITTED TO THE FBI IDENTIFICATION DIVISION TO ESTABLISH A POINTER IN THE III INDEX. NO ARREST OR DISPOSITION DATA WOULD BE INCLUDED ON THAT CARD NOR WOULD SUBSEQUENT ARREST AND DISPOSITION DATA BE FORWARDED TO THE FBI. HOWEVER, PRIOR TO TERMINATION OF SUBMISSION OF THIS ARREST AND DISPOSITION DATA TO THE NATIONAL LEVEL, WE MUST ADDRESS ALTERNATIVES TO PROVIDE SERVICE FOR THOSE NONCRIMINAL JUSTICE PURPOSES THAT NOW RELY UPON THE CENTRALIZED IDENTIFICATION DIVISION RECORDS SERVICES. BECAUSE OF VARIANCES IN STATE LAW REGARDING TO WHOM CRIMINAL HISTORY RECORDS MAY BE DISSEMINATED IN THE NONCRIMINAL JUSTICE COMMUNITY, ALTERNATIVES TO THE CURRENT SERVICE MUST BE IDENTIFIED. AS YOU KNOW, THE FBI PROVIDES THESE RECORDS FOR NONCRIMINAL JUSTICE PURPOSES ONLY AS REQUIRED BY LAW. NOT ONLY ARE THE MANY AND VARIED FEDERAL GOVERNMENT EXECUTIVE BRANCH AGENCIES DEPENDENT UPON ACCESS TO

THESE RECORDS, BUT LIKEWISE, A VARIETY OF STATE STATUTES REQUIRE NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LICENSING, EMPLOYMENT, AND OTHER NONCRIMINAL JUSTICE PURPOSES. WE ARE ENCOURAGED BY THE COOPERATIVE SPIRIT IN WHICH STATES HAVE PROVIDED CRIMINAL HISTORY RECORDS AMONG CRIMINAL JUSTICE AGENCIES DURING THE III TESTING AND ARE OPTIMISTIC THAT A SIMILAR COOPERATIVE APPROACH CAN BE APPLIED TO ADDRESS NONCRIMINAL JUSTICE COMMUNITY NEEDS.

THE FBI CONTINUES TO PLACE A HIGH PRIORITY ON QUALITY ASSURANCE AND AUDIT IN THE NCIC SYSTEM. WE USE A MULTIPRONGED ATTACK THROUGH COMPUTER EDITING, RECORD SAMPLING, USER TRAINING, AND SYSTEM AUDITING AT THE STATE AND LOCAL LEVEL TO ACCOMPLISH THE MAXIMUM LEVEL OF RECORD INTEGRITY POSSIBLE AS A RESULT OF FEDERAL AGENCIES EFFORT. THE UPCOMING STUDY OF NCIC THAT I MENTIONED EARLIER WILL EXTEND THIS EFFORT. THE NCIC STUDY IS A STRATEGIC INITIATIVE WHICH DIRECTLY SUPPORTS NCIC'S LONG-RANGE GOALS:

- TO IMPROVE THE OVERALL EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM THROUGH RESPONSIVENESS, EFFECTIVE MANAGEMENT, AND EFFICIENT HANDLING AND EXCHANGE OF DOCUMENTED CRIMINAL INFORMATION.
- TO SUPPORT USER REQUIREMENTS WITH COST-EFFECTIVE, TIMELY SERVICES AND STATE-OF-THE-ART SYSTEM FUNCTIONALITY, RELIABILITY AND TECHNOLOGY WITHIN THE FRAMEWORK OF A NEW 15-YEAR NCIC SYSTEM LIFE CYCLE.

WE HAVE ESTABLISHED THE FOLLOWING AS GOALS IN THE STUDY:

- FORM THE BASIS FOR NCIC STRATEGIC PLANNING AND DEVELOPMENT THROUGH THE YEAR 2000.
- PROVIDE FOR THE DESIGN OF A NEW GENERATION NCIC SYSTEM THAT WILL PROVIDE ADVANCED AND EXPANDED FUNCTIONALITY FOR NCIC USERS.

- INITIATE A NEW NCIC SYSTEM'S LIFE CYCLE BASED ON A RIGOROUS ANALYTIC APPROACH TO BUILDING A NEW SYSTEM (SPECIFICALLY, THE STUDY COVERS THE ANALYSIS AND DESIGN COMPONENTS OF THE NEW NCIC SYSTEM'S LIFE CYCLE).

- PROVIDE CRIMINAL JUSTICE COMMUNITY NEEDS AND IDENTIFY REQUISITE RESOURCES TO MEET THESE NEEDS.

- DEVELOP A PROTOTYPE OF THE NEW SYSTEM TO ENSURE COMMUNICATION WITH USERS IN THE REQUIREMENTS FORMULATION PROCESS AND SIMULATE FUTURE FUNCTIONALITY OF NCIC.

- PROVIDE ANALYSES AND EVALUATIONS OF THE FUTURE SYSTEM'S FUNCTIONAL REQUIREMENTS AND THE SCOPE OF THE FUNCTIONS TO BE SUPPORTED.

- PROVIDE RESEARCH AND ASSESSMENTS OF THE ENVIRONMENT (TECHNOLOGY, SOCIAL, ECONOMIC, POLITICAL, SECURITY/PRIVACY, LEGAL, ETC.) IN WHICH NCIC MUST OPERATE TO THE YEAR 2000. THIS IS A PARTICULARLY IMPORTANT FACTOR IN SHAPING A SYSTEM ARCHITECTURE WHICH WILL SERVE USERS RESPONSIVELY AND BE FLEXIBLE ENOUGH TO ACCOMMODATE CHANGE THROUGHOUT THE NEW LIFE CYCLE.

- IDENTIFY, DEVELOP, ASSESS, AND RANK PROPOSED ALTERNATIVE SYSTEMS CONCEPTS/DESIGNS.

- DEFINE FEDERAL COMPUTING AND TELECOMMUNICATIONS RESOURCES ACQUISITION REQUIREMENTS.

I WISH TO EMPHASIZE THAT PRIVACY, SECURITY, AND DATA INTEGRITY ARE TOP PRIORITY OBJECTIVES FOR THIS NEW SYSTEM. WE WILL BRING THE BEST EXPERTISE AND TECHNOLOGY TO BEAR IN THESE AREAS, AND OUR FIRST NEW PROTOTYPES WILL BE FOCUSED THERE.

THE SUPPORT OF THIS SUBCOMMITTEE IN THIS NEW INITIATIVE IS APPRECIATED. I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

Mr. Edwards. Thank you, Mr. Bayse.

I believe that we'll hear from Mr. Floyd I. Clarke, next.

Mr. Clarke. Thank you, Mr. Chairman and Congressman Kastenmeier. It is a pleasure for me to be here today to further discuss the proposed testing of the Economic Crime Index, referred to as the ECI.

At the present time, Federal, State, and local law enforcement agencies are routinely exchanging information concerning common subjects of their separate ongoing investigations and prosecutions. This exchange of information is handled by each law enforcement agency in accordance with applicable laws and regulations. The basic problem being encountered by law enforcement agencies concerned with economic crime matters is not whether the information should be exchanged, but how to effect the timely identification of the subjects of these routine exchanges of information.

Due to the extensive interstate nature of major economic crime matters, there is no rapid, efficient, and secure method by which various Federal, State, and local law enforcement agencies can identify common subjects of their separate investigations. In most cases it would require a manual search of the indices and files at each field office of each agency in order to determine if two or more law enforcement agencies or field offices of the same agency received separate complaints concerning the same subject.

Law enforcement investigators and prosecutors have a need to know, on a rapid and cost effective basis, about separate investigations or prosecutions concerning the subjects of their economic crime matters. The Economic Crime Index is intended to provide the means by which separate law enforcement agencies will be able to store, the identities only, of the subjects of their economic crime investigations for the duration of their investigations and prosecutions. The ECI will automatically notify two law enforcement agencies when information which matches a common subject has been separately entered by them. They can, thereafter, contact each other to share the specific details of their separate interests.

On December 8, 1983, the Attorney General's Economic Crime Council approved a proposal to establish a central repository of information identifying common subjects of fraud investigations by the FBI and other law enforcement agencies. The Attorney General's Economic Crime Council is comprised of U.S. Department of Justice officials, including the FBI, and about 21 U.S. attorneys. Again, during its meeting on May 24, 1984, the Economic Crime Council discussed the need for the Economic Crime Index.

A research project funded by Peat, Marwick, Mitchell & Co., entitled "How to Detect and Prevent Business Fraud" and published in 1982 by Prentice-Hall, reported losses from white-collar crime and fraud at approximately $200 billion per year.

Several important areas of white-collar crime and fraud are "Ponzi schemes," the interstate transportation of stolen and counterfeit securities and international financial fraud schemes. They concern possible violations of the fraud by wire statute, which is found at title 18 of the U.S. Code, section 1343, and the interstate transportation of stolen property statute, which is found at title 18, U.S. Code, section 2314, and counterfeiting of State and corporate securities, which is found at title 18, U.S. Code, section 511.

An example of a major "Ponzi" is the FBI's investigation of a case captioned "Gadianton." Investigation by the FBI, in this case, was initiated on March 18, 1981, predicated upon information received from an investigator assigned to the Orem, UT, Police Department. The initial information indicated that several local investors may have been defrauded by a local company that purportedly used the investors' money to finance the accounts receivable of other local companies.

The investors were promised an 84 percent return on their money invested for a 9-month period. Although initial investors received a return on their investments, subsequent investors received nothing because the account receivables they supposedly were financing did not exist. This massive "Ponzi" scheme operated during the period of September 1978, to September 1981. This investigation also identified 3,852 investors located in 37 States and 8 foreign countries who lost over $40 million.

The investigation of this fraudulent scheme resulted in the identification of 54 subjects, 35 separate subject companies and 68 corporate checking accounts which received over $69 million. The principal subjects, some of whom were convicted felons, were subsequently convicted in U.S. District Court, Salt Lake City, UT, in 1984.

Based upon numerous investor complaints, a Salt Lake City TV investigative reporter presented a 30-minute report on September 14, 1981, which included hidden-camera interviews of one of the subjects.

The subjects made extensive use of the interstate communication facilities and computers to effect the fraudulent scheme. Had the ECI been available to law enforcement agencies in the numerous jurisdictions which received investor complaints early on in this matter, a faster and more effective law enforcement response would have been possible.

In such massive frauds, numerous Federal, State, and local law enforcement and regulatory authorities would have jurisdiction and frequently receive complaints from individual investors. It is difficult, however, for these individual agencies to rapidly and effectively identify and address such matters before millions of dollars are lost.

In order to properly address this problem area, a method is necessary which would promote a more coordinated law enforcement response to white-collar crime in general and massive economic frauds, in particular, through the timely and effective identification and consolidation of parallel or related investigations of common subjects.

It would also promote a more coordinated prosecutive response to white-collar crime, and particularly economic frauds, through the timely and effective identification of common defendants in multiple judicial jurisdictions.

During the proposed test phase, the ECI will contain identifying data for individuals and corporations under investigation by the FBI for fraud by wire and interstate transportation of stolen property in the security-area violations.

Various ways are being considered to implement the ECI concept, one of which is to include the index in the NCIC. If the FBI determines, after a thorough review, that it is appropriate to test the ECI in the NCIC, the FBI will enter and retrieve information through those FBI field offices which have direct access to the NCIC through FBI Headquarters.

Also included in the initial proposed test phase of the ECI will be the Department of Justice and other Federal law enforcement agencies with direct access to NCIC. These participating Federal law enforcement agencies must have investigative jurisdiction in economic fraud violations and agree to maintain permanent supporting documentation for their entry of records into the ECI.

Information will be entered by the FBI during its preliminary inquiries or investigations of fraud by wire and interstate transportation of stolen property-securities matters.

Federal law enforcement agencies other than the FBI will be permitted to make entries of subjects or corporations where facts or circumstances are documented in their files which reasonably indicate a criminal violation has occurred. These violations will be limited to those economic crime type violations which are within their investigative jurisdiction and identified by title and section of the U.S. Code.

Associates of subjects will not be included unless they are also subjects of an active investigation.

If successful during its proposed test phase, the ECI will provide a rapid and effective means for law enforcement and regulatory agencies to identify subjects of common investigative and prosecutive concern.

The proposed ECI will not exchange intelligence information. It will merely provide a computer match of two identical entries of information describing subjects of economic crime investigations. The two or more law enforcement agencies or offices which made identical entries of subjects of their investigations will be immediately notified of the matching information concerning the identities of a possible identical subject and the identities of the law enforcement agencies which made the identical entries. Any subsequent communication between the concerned law enforcement agencies will occur outside the computerized system.

What I have provided you is a general outline of the proposed makeup of the ECI, why it is considered an important tool, and how, at this point in time, it is expected to work.

As you will recall, on April 17, 1985, Director Webster testified before this subcommittee and advised that the FBI was looking at a number of alternatives for the implementation of the ECI and would welcome your comments regarding this very promising investigative tool.

Mr. Chairman, this is the end of my formal remarks, and I will participate with the panel in answering any questions that you might have.

[The statement of Mr. Clarke follows:]

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

STATEMENT OF
INSPECTOR-DEPUTY ASSISTANT DIRECTOR
FLOYD I. CLARKE

BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
APRIL 25, 1985

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM HERE AT YOUR REQUEST TO DISCUSS THE PROPOSED TESTING OF AN ECONOMIC CRIME INDEX (ECI).

AT THE PRESENT TIME, FEDERAL, STATE AND LOCAL LAW ENFORCEMENT AGENCIES ARE ROUTINELY EXCHANGING INFORMATION CONCERNING COMMON SUBJECTS OF THEIR SEPARATE ONGOING INVESTIGATIONS AND PROSECUTIONS. THIS EXCHANGE OF INFORMATION IS HANDLED BY EACH LAW ENFORCEMENT AGENCY IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS. THE BASIC PROBLEM BEING ENCOUNTERED BY LAW ENFORCEMENT AGENCIES CONCERNED WITH ECONOMIC CRIME MATTERS IS NOT WHETHER THE INFORMATION SHOULD BE EXCHANGED, BUT HOW TO EFFECT THE TIMELY IDENTIFICATION OF THE SUBJECTS OF THESE ROUTINE EXCHANGES OF INFORMATION.

DUE TO THE EXTENSIVE INTERSTATE NATURE OF MAJOR ECONOMIC CRIME MATTERS, THERE IS NO RAPID, EFFICIENT AND SECURE METHOD BY WHICH VARIOUS FEDERAL, STATE AND LOCAL LAW ENFORCEMENT AGENCIES CAN IDENTIFY COMMON SUBJECTS OF THEIR SEPARATE INVESTIGATIONS. IN MOST CASES IT WOULD REQUIRE A MANUAL SEARCH OF THE INDICES AND FILES AT EACH FIELD OFFICE OF EACH AGENCY IN ORDER TO DETERMINE IF TWO OR MORE LAW ENFORCEMENT AGENCIES, OR FIELD OFFICES OF THE SAME AGENCY, RECEIVED SEPARATE COMPLAINTS CONCERNING THE SAME SUBJECT.

LAW ENFORCEMENT INVESTIGATORS AND PROSECUTORS HAVE A NEED TO KNOW, ON A RAPID AND COST EFFECTIVE BASIS, ABOUT SEPARATE INVESTIGATIONS OR PROSECUTIONS CONCERNING THE SUBJECTS OF THEIR ECONOMIC CRIME MATTERS. THE ECONOMIC CRIME INDEX (ECI) IS INTENDED TO PROVIDE THE MEANS BY WHICH SEPARATE LAW ENFORCEMENT AGENCIES WILL BE ABLE TO STORE THE IDENTITIES ONLY OF THE SUBJECTS OF THEIR ECONOMIC CRIME INVESTIGATIONS FOR THE DURATION OF THEIR INVESTIGATION AND PROSECUTION. THE ECI WILL AUTOMATICALLY NOTIFY TWO LAW ENFORCEMENT AGENCIES WHEN INFORMATION WHICH MATCHES A COMMON SUBJECT HAS BEEN SEPARATELY ENTERED BY THEM. THEY CAN THEREAFTER CONTACT EACH OTHER TO SHARE THE SPECIFIC DETAILS OF THEIR SEPARATE INTERESTS.

ON 12/8/83, THE ATTORNEY GENERAL'S ECONOMIC CRIME COUNCIL APPROVED A PROPOSAL TO ESTABLISH A CENTRAL REPOSITORY OF INFORMATION IDENTIFYING COMMON SUBJECTS OF FRAUD INVESTIGATIONS BY THE FBI AND OTHER LAW ENFORCEMENT AGENCIES. THE ATTORNEY GENERAL'S ECONOMIC CRIME COUNCIL IS COMPRISED OF U. S. DEPARTMENT OF JUSTICE OFFICIALS INCLUDING THE FBI, AND ABOUT TWENTY-ONE U. S. ATTORNEYS. DURING ITS MEETING ON 5/24/84, THE ECONOMIC CRIME COUNCIL (ECC) DISCUSSED THE NEED FOR AN ECONOMIC CRIME INDEX.

A RESEARCH PROJECT FUNDED BY PEAT, MARWICK, MITCHELL AND COMPANY ENTITLED HOW TO DETECT AND PREVENT BUSINESS FRAUD, AND PUBLISHED IN 1982, BY PRENTICE-HALL, REPORTED LOSSES FROM

WHITE-COLLAR CRIME AND FRAUD AT APPROXIMATELY $200 BILLION PER YEAR.

SEVERAL IMPORTANT AREAS OF WHITE-COLLAR CRIME AND FRAUD ARE PONZI SCHEMES, THE INTERSTATE TRANSPORTATION OF STOLEN AND COUNTERFEIT SECURITIES AND INTERNATIONAL FINANCIAL FRAUD SCHEMES. THEY CONCERN POSSIBLE VIOLATIONS OF THE FRAUD BY WIRE STATUTE (TITLE 18, U. S. CODE, SECTION 1343), THE INTERSTATE TRANSPORTATION OF STOLEN PROPERTY STATUTE (TITLE 18, U. S. CODE, SECTION 2314), AND COUNTERFEITING OF STATE AND CORPORATE SECURITIES (TITLE 18, U. S. CODE, SECTION 511).

AN EXAMPLE OF A MAJOR PONZI IS THE FBI'S INVESTIGATION OF A MAJOR CASE CAPTIONED "GADIANTON." INVESTIGATION BY THE FBI WAS INITIATED ON 3/18/81, PREDICATED UPON INFORMATION RECEIVED FROM AN INVESTIGATOR ASSIGNED TO THE OREM, UTAH POLICE DEPARTMENT. THE INITIAL INFORMATION INDICATED THAT SEVERAL LOCAL INVESTORS MAY HAVE BEEN DEFRAUDED BY A LOCAL COMPANY THAT PURPORTEDLY USED THE INVESTORS MONEY TO FINANCE THE ACCOUNTS RECEIVABLE OF OTHER LOCAL COMPANIES. THE INVESTORS WERE PROMISED AN 84% RETURN ON THEIR MONEY INVESTED FOR A NINE MONTH PERIOD. ALTHOUGH INITIAL INVESTORS RECEIVED A RETURN ON THEIR INVESTMENT, SUBSEQUENT INVESTORS RECEIVED NOTHING BECAUSE THE ACCOUNT RECEIVABLES THEY SUPPOSEDLY WERE FINANCING DID NOT EXIST. THIS MASSIVE PONZI SCHEME OPERATED DURING THE PERIOD 9/78 TO 9/81. THIS INVESTIGATION ALSO IDENTIFIED 3,852 INVESTORS LOCATED IN 37

STATES AND EIGHT FOREIGN COUNTRIES WHO LOST OVER $40 MILLION. THE INVESTIGATION OF THIS FRAUDULENT SCHEME RESULTED IN THE IDENTIFICATION OF 54 SUBJECTS, 35 SEPARATE SUBJECT COMPANIES AND 68 SEPARATE CORPORATE CHECKING ACCOUNTS WHICH RECEIVED OVER $69 MILLION. THE PRINCIPAL SUBJECTS, SOME OF WHOM WERE CONVICTED FELONS, WERE SUBSEQUENTLY CONVICTED IN U. S. DISTRICT COURT, SALT LAKE CITY, UTAH, IN 1984. BASED UPON NUMEROUS INVESTOR COMPLAINTS, A SALT LAKE CITY TV INVESTIGATIVE REPORTER PRESENTED A 30 MINUTE REPORT ON 9/14/81, WHICH INCLUDED HIDDEN CAMERA INTERVIEWS OF ONE OF THE SUBJECTS. THE SUBJECTS MADE EXTENSIVE USE OF INTERSTATE COMMUNICATION FACILITIES AND COMPUTERS TO EFFECT THEIR FRAUDULENT SCHEME. HAD THE ECI BEEN AVAILABLE TO THE LAW ENFORCEMENT AGENCIES IN THE NUMEROUS JURISDICTIONS WHICH RECEIVED INVESTOR COMPLAINTS EARLY ON IN THIS MATTER, A FASTER AND MORE EFFECTIVE LAW ENFORCEMENT RESPONSE WOULD HAVE BEEN POSSIBLE.

IN SUCH MASSIVE FRAUDS, NUMEROUS FEDERAL, STATE AND LOCAL LAW ENFORCEMENT AND REGULATORY AUTHORITIES WOULD HAVE JURISDICTION AND FREQUENTLY RECEIVE COMPLAINTS FROM INDIVIDUAL INVESTORS. IT IS DIFFICULT, HOWEVER, FOR THESE INDIVIDUAL AGENCIES TO RAPIDLY AND EFFECTIVELY IDENTIFY AND ADDRESS SUCH MATTERS BEFORE MILLIONS OF DOLLARS ARE LOST.

IN ORDER TO PROPERLY ADDRESS THIS PROBLEM AREA A METHOD IS NECESSARY WHICH WOULD:

1. PROMOTE A MORE COORDINATED LAW ENFORCEMENT RESPONSE TO WHITE-COLLAR CRIME IN GENERAL AND MASSIVE ECONOMIC FRAUDS IN PARTICULAR THROUGH THE TIMELY AND EFFECTIVE IDENTIFICATION AND CONSOLIDATION OF PARALLEL OR RELATED INVESTIGATIONS OF COMMON SUBJECTS.

2. PROMOTE A MORE COORDINATED PROSECUTIVE RESPONSE TO WHITE-COLLAR CRIME AND PARTICULARLY ECONOMIC FRAUDS THROUGH THE TIMELY AND EFFECTIVE IDENTIFICATION OF COMMON DEFENDANTS IN MULTIPLE JUDICIAL JURISDICTIONS.

DURING THE PROPOSED TEST PHASE, THE ECI WILL CONTAIN IDENTIFYING DATA FOR INDIVIDUALS AND CORPORATIONS UNDER INVESTIGATION BY THE FBI FOR FRAUD BY WIRE AND INTERSTATE TRANSPORTATION OF STOLEN PROPERTY - SECURITIES VIOLATIONS.

VARIOUS WAYS ARE BEING CONSIDERED TO IMPLEMENT THE ECI CONCEPT, ONE OF WHICH IS TO INCLUDE THE INDEX IN THE NCIC. IF THE FBI DETERMINES AFTER A THOROUGH REVIEW THAT IT IS APPROPRIATE TO TEST THE ECI IN THE NCIC, THE FBI WILL ENTER AND RETRIEVE INFORMATION THROUGH THOSE FBI FIELD OFFICES WHICH HAVE DIRECT ACCESS TO THE NCIC AND THROUGH FBI HEADQUARTERS.

ALSO INCLUDED IN THE INITIAL PROPOSED TEST PHASE OF THE ECI WILL BE THE DEPARTMENT OF JUSTICE AND OTHER FEDERAL LAW ENFORCEMENT AGENCIES WITH DIRECT ACCESS TO NCIC. THESE PARTICIPATING FEDERAL LAW ENFORCEMENT AGENCIES MUST HAVE

INVESTIGATIVE JURISDICTION IN ECONOMIC FRAUD VIOLATIONS AND AGREE TO MAINTAIN PERMANENT SUPPORTING DOCUMENTATION FOR THEIR ENTRY OF RECORDS INTO THE ECI.

INFORMATION WILL BE ENTERED BY THE FBI DURING ITS PRELIMINARY INQUIRIES OR INVESTIGATIONS OF FRAUD BY WIRE AND INTERSTATE TRANSPORTATION OF STOLEN PROPERTY - SECURITIES MATTERS.

FEDERAL LAW ENFORCEMENT AGENCIES OTHER THAN THE FBI WILL BE PERMITTED TO MAKE ENTRIES OF SUBJECTS OR CORPORATIONS WHERE FACTS OR CIRCUMSTANCES ARE DOCUMENTED IN THEIR FILES WHICH REASONABLY INDICATE A CRIMINAL VIOLATION HAS OCCURRED. THESE VIOLATIONS WILL BE LIMITED TO THOSE ECONOMIC CRIME TYPE VIOLATIONS WHICH ARE WITHIN THEIR INVESTIGATIVE JURISDICTION AND IDENTIFIED BY TITLE AND SECTION OF THE UNITED STATES CODE.

ASSOCIATES OF SUBJECTS WILL NOT BE INCLUDED UNLESS THEY ARE ALSO SUBJECTS OF AN ACTIVE INVESTIGATION.

IF SUCCESSFUL DURING ITS PROPOSED TEST PHASE, THE ECI WILL PROVIDE A RAPID AND EFFECTIVE MEANS FOR LAW ENFORCEMENT AND REGULATORY AGENCIES TO IDENTIFY SUBJECTS OF COMMON INVESTIGATIVE AND PROSECUTIVE CONCERN.

THE PROPOSED ECI WILL NOT EXCHANGE INTELLIGENCE INFORMATION. IT WILL MERELY PROVIDE A COMPUTER MATCH OF TWO IDENTICAL ENTRIES OF INFORMATION DESCRIBING SUBJECTS OF ECONOMIC CRIME INVESTIGATIONS.

THE TWO (OR MORE) LAW ENFORCEMENT AGENCIES (OR OFFICES) WHICH MADE IDENTICAL ENTRIES OF SUBJECTS OF THEIR INVESTIGATIONS WILL BE IMMEDIATELY NOTIFIED OF THE MATCHING INFORMATION CONCERNING THE IDENTITIES OF A POSSIBLE IDENTICAL SUBJECT AND THE IDENTITIES OF THE LAW ENFORCEMENT AGENCIES WHICH MADE THE IDENTICAL ENTRIES. ANY SUBSEQUENT COMMUNICATION BETWEEN THE CONCERNED LAW ENFORCEMENT AGENCIES WILL OCCUR OUTSIDE THE COMPUTERIZED SYSTEM.

WHAT I HAVE PROVIDED YOU IS A GENERAL OUTLINE OF THE PROPOSED MAKE-UP OF THE ECI, WHY IT IS CONSIDERED AN IMPORTANT TOOL, AND HOW, AT THIS POINT IN TIME, IT IS EXPECTED TO WORK.

AS YOU WILL RECALL, ON APRIL 17, 1985, DIRECTOR WEBSTER TESTIFIED BEFORE THIS SUBCOMMITTEE AND ADVISED THAT THE FBI WAS LOOKING AT A NUMBER OF ALTERNATIVES FOR THE IMPLEMENTATION OF THE ECI AND WOULD WELCOME YOUR COMMENTS REGARDING THIS VERY PROMISING INVESTIGATIVE TOOL.

THIS IS THE END OF MY FORMAL STATEMENT. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. **Edwards**. Thank you, Mr. Clarke.

I believe there are no other statements to be made. Is that correct?

Mr. **Clarke**. Correct.

Mr. **Edwards**. Mr. Kastenmeier.

Mr. **Kastenmeier**. Thank you, Mr. Chairman.

Do I understand that including this index, the Economic Crime Index, in the NCIC is merely one option and that that has not been recommended to be the primary alternative or option?

Mr. **Clarke**. I think at this point, Mr. Kastenmeier, that the NCIC is an alternative. We are looking at other possible ways. It appears, on the surface and at first blush, that this may be the more efficient and economical way to do it. We don't want to say that that is the only way or the best way until we've fully explored all of them. The initial assessment is that NCIC probably would be, but we are looking at alternatives.

Mr. **Kastenmeier**. One other question I have, Mr. Clarke, is what this is going to include. Apparently, that is still not precisely determined. You mentioned several important areas. But we do not, at this point, I gather, know precisely what crimes are to be included.

For example, is it expected to include bank fraud, securities fraud, money laundering, fraud against the Government, bribery of public officials, financial crimes, RICO cases, credit card fraud—those are eight possibilities?

In other words, at this point in time we're not precisely certain which crimes are to be included and which are not?

Mr. **Clarke**. From the FBI standpoint the initial test phase would only include those crimes which we would be conducting investigations under title 18, section 1343, the fraud by wire, and also the interstate transportation of stolen property-securities, which is 18 U.S.C. 2314. Those would be the only crimes that the FBI would be including during this test phase.

The specific crimes that would be included by other agencies would be identified by them in their area of jurisdiction within the white-collar crime umbrella. Those have not been specifically identified. We do know which statutes would be within the primary jurisdiction of those agencies. Those particular definitions have not been articulated at this point, but from the FBI standpoint, yes.

Mr. **Kastenmeier**. Because, obviously, the term "white-collar crime" is rather broad, and theoretically could include a wide panoply of crimes. In this test phase, clearly, it is quite limited in terms of which crimes you intend to include.

Mr. **Clarke**. It is, Congressman Kastenmeier. And the reason for that is that these are the types of crimes that we have identified, that are the kinds of crimes that can go on for a period of time without the local authorities even recognizing that it may be a Federal crime or may be a crime that may be being committed in other jurisdictions.

Basically speaking, when you initiate a bank fraud, an embezzlement type of investigation, you have notification from the bank and you've pretty well got your subjects identified. These advance fee schemes, "Ponzi" schemes, confidence men games, those are the kinds of things that can take place on a wide geographical basis, and the method and mechanism of investigating those and the communication, the recognition, of violations in multiple jurisdictions, there is no current mechanism for identifying that fact.

Mr. **Kastenmeier**. Thank you, Mr. Clarke.

Mr. Bayse, I have one question for you, and that is:

In conclusion you spoke about an upcoming study on the NCIC, which would be a strategic initiative to support long-range goals. Among the goals of the study you pointed out that it would provide research and assessment of the environment—technological, social, economic, political, security, et cetera—in which the computer system would operate in the year 2000.

I'm not sure what this all means. What sort of political information do you hope to derive which would influence the goals of NCIC in the year 2000, for example?

Mr. **Bayse**. This is a broad look at scenarios for the future in which the system has to operate. We find ourselves with the old system having difficulty in economically and efficiently maintaining the system and adding new capabilities to it, such as the missing children file and others that have been brought about by management mandate, executive mandate, or through legislation. So, what we're going to try to do is look downstream at what types of possible drivers to the system—or to a new system—would occur in the future, have this documented as part of the study, and then design the system so that we could be flexible enough to accomodate or to be elastic enough to add or adjust the system in a way that is more responsive to the environment and to the societal atmosphere in which it is operating.

Mr. **Kastenmeier**. Might this include, for example, a determination from a political standpoint, whether the trends are conservative or liberal in this country.

Mr. **Bayse**. Not specifically along those lines, no, sir.

Mr. **Kastenmeier**. What would be political considerations?

Mr. **Bayse**. I think it's more—maybe that word would be more oriented toward what type of executive branch and management oversight types of things would be necessary for the system to be able to respond to its users.

Mr. **Kastenmeier**. The reason I raise the question——

Mr. **Bayse**. Excuse me, sir.

The users—most of the users of this system are at the state and local level, not necessarily at the Federal level. And there are factors there at the State level, and including the resources that are being made available for law enforcement systems, the resources that are being made available for other uses to which this system is put. You would have to sense that in some way and be able to tell that.

You know that, for instance, that on the III system, there are some states that are unable to join the system, either because of resources or other reasons, at the state or local level. And this is the sort of atmosphere, I think, I'm talking about.

Mr. **Kastenmeier**. Well, I think there's a great deal of apprehension about the extent to which political factors are factored into the study in any sense. I say this because the Congress and the people are often divided on political issues. We are this week with respect to the role of this country in Nicaragua. And it may be that the executive branch is used to making its own judgments irrespective of congressional views.

So, to the extent that there is a consideraton of political factors in the use of this system, I would think it ought to be quite separate from politics.

Mr. **Bayse**. It is, in the sense that you've brought up this issue.

Right now we're faced with something called "Reform 88," in the Office of Management and Budget, which says every investment and information system is required to have a 10 percent return on investment. Now, maybe that's not a political factor, maybe that choice of word; but that is a management mandate. It comes out in terms of something we have to respond to on building a new system.

And there are some Reform 88 initiatives in terms of consolidating common systems, such as payroll and financial management systems, with certain internal controls. But we would have to be able to respond to a system downstream every time.

The NCIC has weathered a number of years along the line with lots of different political winds in the Government, has no leaning whatsoever. It's for legitimate law-enforcement purposes. But there are factors that could drive its ability to serve, and those are the ones we are looking for.

Mr. **Nemecek**. Congressman Kastenmeier.

Mr. **Kastenmeier**. Yes.

Mr. **Nemecek**. If I could follow up on that.

It was my understanding that that term was meant to ensure that consideration was given to those comments, points, and concerns that had been raised by Congress through the various oversight processes like today. It was designed to ensure that the study was not done in a purely data processing vacuum without ensuring that those issues that are of concern to this subcommittee and others are addressed. So that was the intent. The word "political" may be somewhat misleading, but it was to factor in the considerations that we share.

Mr. **Kastenmeier**. Well, obviously, in the year 2000 the NCIC can be a very powerful influence in American life, not solely, perhaps, with reference to crime. And there are some of us who have some apprehension about it.

Thank you, Mr. Chairman.

Mr. **Edwards**. We're going to continue for a few minutes and then take a break—we do have quite a number of questions—but there's a vote on the floor.

However, I want to make it very clear that this subcommittee thinks the FBI does very good work; we have a lot of affection and admiration for the Bureau and we believe it's doing a first class job. That doesn't mean, however, that we don't want you to worry along with us about some of the other aspects of your work. Sometimes I feel that, like on this particular subject, we're talking over here and you're talking over here. The Bureau and the Department of Justice apparently have made up their minds that this is something they want to do, they're going to do it, period. And not one witness, not one statement, has shown any sympathy or understanding of the concerns that we have.

I've been doing this for a long time, and so has Mr. Kastenmeier. Ten or twelve years ago, 20 percent of your work was in domestic security; you had hundreds of thousands of open files in the FBI. Partly through audits by the General Accounting Office and through work of this and other committees and through self-examination, finally, by the Bureau, those cases were found to be worthless; there was no criminal conduct involved except in a handful of them. And you don't do that work anymore, not at all.

While you were doing that kind of work, it caused a lot of problems in the country, because people who had never committed a crime were being investigated by the FBI, over and over again, and there was no way to close the files. Well, you don't have them anymore; you have, what, 50 or 100 internal security or domestic intelligence files, and they're all legitimate law enforcement matters.

So I really would hope that some of the social implications of this major step—I haven't heard anybody say that this is a major change. It is an immense change that you are contemplating. Also, it is open ended, totally open ended, because you could put any kind of a name in there, any kind of a crime, if you wanted to, under the rules that you are operating under now. You could put communists, homosexuals, anything you wanted to, you really could.

Now, I'm delighted to see that we're starting to talk about guidelines. Mr. Clarke, you're starting to talk about regulations. That's terribly important.

We're going to recess now, but when we come back let's think a little bit about that. I was hoping that when Mr. Kastenmeier was asking some questions that that's what this page 4 in Mr. Bayse's testimony had to do with, that some indepth thinking was going to be done about that aspect of the NCIC: what does it mean to American society?

Mr. **Bayse**. That's exactly what that's for, Mr. Chairman. I've testified on that before, and I——

Mr. **Edwards**. You're going to spend $2 million on the study. I compliment you on that. But you're going to go ahead with a major change without waiting for the results of the study.

Mr. **Bayse**. The study is for a new system. We have a current system that is serving legitimate law enforcement aspects right now, including all the things that your oversight has been brought to bear on for a number of years. And I think we have been sensitive in that. We looked for the alternatives to centralization of criminal histories and the message switching, and we've implemented an alternative under your oversight. And now we have a chance to take a new look, fresh look, look downstream and examine those major issues, including social. And to the degree that we can look at the Congress and its oversight and what are the concerns, and we can make the system flexible enough to accommodate those concerns and be responsive to them, that's what we intend to do. Perhaps we should have articulated it in more detail and more depth, and I'd be pleased to do that.

Mr. **Edwards**. Well, it will be in place by the time the study comes out, you see; that's the problem.

You'll have to forgive us for a few minutes. We will have to go vote, and we'll be right back.

[Recess.]

Mr. **Edwards**. The subcommittee will come to order.

For a moment I would like to pursue the point we were discussing just before the recess.

Could one of the witnesses tell us what the privacy issues might be that you are considering with regard to this change in the NCIC?

Mr. **Nemecek**. Congressman Edwards, if I——

Mr. **Edwards**. Yes, Mr. Nemecek.

Mr. **Nemecek**. I wanted an opportunity to comment about your earlier statement——

Mr. **Edwards**. Oh, thank you.

Mr. **Nemecek**. I believe you were correct in your assessment that the subcommittee was talking "over here" and the FBI is talking "over here." I hope to add some clarification to that. The Advisory Policy Board presentation of a topic is the initial preliminary review of the concept which addresses, generally, is there a need in the criminal justice community for this type of application, is NCIC generally an appropriate vehicle for this, and various fleshing out of the concept, itself, as best we can at that particular stage. To the extent that the board makes various recommendations, it's taken into consideration that we then must go into the design and the operational design.

I want to assure you and the subcommittee, that the FBI, Technical Services Division, and the NCIC employees are very sensitive to those areas of concern that have been expressed by you. We're very concerned that only the limited amount of information is included in these records that is necessary to effect identification. We have always accepted that NCIC is really a way of matching records on individuals, but the minimum amount, only, that is necessary to provide an identification. And that most certainly is our goal, to limit the amount of information and to avoid any investigative data if it does not lead to the identification and matching process itself. So, we most certainly are concerned about that.

Limiting the types of crimes, nonserious, those that are least likely to be perpetrated in a manner in which we might have jurisdiction, most certainly we're sensitive to that. I believe that once we have presented our final design, our final concept, that we will be able to reassure you of our concern about these various areas.

Speaking personally, we look forward to the opportunity to provide the exact detailed specifications about how this file might work, and want to reassure you that we certainly are sensitive to those issues and concerning who can have the information and under what circumstances.

Mr. **Edwards**. Well, thank you. That is comforting to hear.

It is rather disappointing to hear that this decision was made in discussions that apparently had no notes, no reports, just people sitting around and chatting about it. That's what the testimony of the Associate Attorney General was. For a major change like this, we would hope that indepth studies would have been made by the Department of Justice and the FBI. And, to your credit, you are making an indepth study, spending $2 million; but you're not going to pay any attention to that study insofar as this major change is concerned.

What's the rush? Why don't you wait and see what this study comes up with?

Mr. **Clarke**. If I could, Mr. Chairman, I'd like to comment in part on that, and then I think the study aspect, maybe Mr. Bayse could respond to. But in response to your earlier comments, I think that in looking at where we are in the thought process, in the developmental process of the Economic Crime Index, is that we're still in a discussion thinking stage, that there has been much discussion and deliberation to consider some of the issues that you have talked about. We're still in the process of developing the criteria for the threshhold level for what information would be entered into the system.

Also, as far as the written proposals, it's my understanding that as this matter was being discussed and presented at the NCIC Advisory Policy Board, that there was a document on a limited feasibility study which was distributed. And I do believe that members of this subcommittee's representatives were present and provided with copies of that limited feasibility study, that we are trying to make sure that our deliberations and our thought processes are out in the open, where we can have an exchange of ideas and develop them in consideration of those concerns.

And, then, the mechanism by which the information will be exchanged is no different than the systems that are in place today. The development of this system is only a means by which two law enforcement agencies who have similar interests will be notified of similar interests. The computer, itself, will not transmit that intelligence data. It will require the two law enforcement agencies coming together, first of all, to make sure that they are legitimate law enforcement agencies who are exchanging the information, to make sure that the information is, in fact, on common subjects, to go through the same normal procedures that we would today if an individual called us on the telephone and said, "I'm sergeant so-and-so from the Phoenix Police Department, can you tell me if you have anything on a particular subject?" We would not automatically accept his representations and divulge information, we would go through a very deliberate process of making sure that he is a legitimate law enforcement official with a legitimate interest.

So, we are developing those concerns in light of what we see the problems to be, and focusing on the sensitivities that you have raised. And I'm sure you're aware that the Director has testified many times that he is sensitive to those considerations and that his approval of this project would be contingent upon satisfaction that those processes have been thoroughly explored.

Mr. **Edwards**. Thank you, Mr. Clarke.

The minority counsel must go to another meeting, so at this time I recognize Mr. Kiko.

Mr. **Kiko**. I've got basically two questions. One is dealing with the accuracy of the items included in the record.

How will the accuracy of the items included be verified?

And if items can be entered by any NCIC user in the country, verification would be, as it is now, complex.

NCIC has consistently maintained that local users must be responsible for maintaining the accuracy of the records. With this new Economic Crime Index, would the NCIC assume a greater responsibility for the quality of data in the ECI?

Mr. **Nemecek**. If I could answer that.

Any file that is established and maintained in NCIC will have the highest possible level of quality assurance that we can accomplish. I believe Mr. Bayse has talked about the early stages of controlling the information entered into the computer, itself, through various computer edits. We have personnel assigned to do random sampling of the records and review which includes going back to the original source of the information. We have periodic validations during the course of the year that provide those records to the entering agency, requiring them to ensure that the information is accurate, complete and up-to-date. We have proposed and are discussing even a higher level of review and oversight that would be provided by our Criminal Investigative Division in terms of the information that would be entered in there, and ensuring that there are no utilizations of the system that we would not sanction. So, I would assure you that the same high level we attempt to accomplish in our other files will be exceeded by this files.

Mr. **Boyd**. If I could add one point, Congressman.

We also have in place, and have for the last year, an audit team which goes out to the State and does the sampling of individual records. Here is the opportunity where we would take an entry and go right back to the police department which entered it, determine was there, in fact, a legitimate case open and was the information in that record accurate and complete.

Mr. CLARKE. One of the things from an investigative standpoint that we are concerned about, also, in light of the privacy and security of the information aspects, we recognize that there might be a potential for an abuse of this kind of system, that if an agency wanted to use it as a method of inquiring as opposed to entry, that they may very well just enter a case to determine if there is another investigation ongoing, and then immediately delete it; and in our discussions, in trying to make sure that there are appropriate safeguards, develop into the system a method that would identify where there is that kind of activity in a short period of time, where we could then follow up to determine the facts surrounding that kind of an entry. So, we are concerned about that and working it in, also, with the regular audit procedures that are currently used in the NCIC system.

Mr. KIKO. And I have another question which is not really connected with the Economic Crime Index.

It has been reported that law enforcement authorities would be given a special warning, through the Interstate Identification Index, I think, whenever they are dealing with someone arrested for a firearms offense.

Sometimes are we talking about bookkeeping violations for BATF at local gun dealers, other times we are talking about people that have committed a violent crime with firearms.

I guess there is some concern among some of the Republican members that people that have been guilty of committing bookkeeping errors—and recently BATF didn't even have the right forms—would be the subject of special warnings.

Mr. BOYD. The warning envisions people who have committed a violent offense using a weapon and does not envision what you talk about as bookkeeping entries. And what the warning would be is merely highlighting what is already in the file, but the person has a record of these offenses. Rather than having to read down through the record, it would highlight it for the reader of the record.

Mr. NEMECEK. These types of offenses do not qualify, and have not qualified, for entry into our criminal history records, in view of the fact that we only collect felony type crimes. And most certainly, in our review of any offenses, if there were any that met that definition technically we would ensure that that is excluded.

Mr. KIKO. OK, I have no further questions.

Mr. EDWARDS. Thank you, Mr. Kiko.

Now, as the new procedures progress, local police will have access to this file, as they have now to NCIC. I'd like to point out that there is a built-in protection that you have at the present time, that is very important to the FBI and that you have guarded for a long time and with good judgment. That is that there is always an agent between the public or the local police and unwarranted disclosures of investigatory data. That is a measure of protection not only for the FBI but for citizens in general. I know that if a local law enforcement officer from some city, anywhere, phones up the FBI and says, "Do you have a case on Jones?" that information is not given out automatically.

The problem with the contemplated plan you have is that the information will be given automatically to a legitimate law enforcement agency. And, regretably, there are some crooked people in law enforcement here and there. We read the paper on a daily basis, and you will find that police here and there do get involved in criminal activity. So, there is a danger. You've done away with the protection that you have now, which is, "Well," the guy at the other end of the telephone line, says perhaps, "I'll think about it before," or, "I should talk to the SAC before I give you any information."

Going back a long time to the Dillinger days, there were tipoffs. One time the Dillinger gang escaped in a ditch, if you remember your FBI history, because the local sheriff tipped off the gang about the raid that was about to take place.

So, how can you protect yourself from tipoffs through the NCIC, if you are going to allow almost indiscriminate access by local police to investigatory information, which you don't have now?

Mr. CLARKE. Again, Mr. Chairman, in order for two law enforcement agencies to come together, first of all there would have to be the original entry. That entry would have to be supported by a legitimate ongoing investigation where a criminal act has been committed. There would have to be a subsequent entry by another department indicating that that same individual or company has perpetrated a criminal act in their territory. So, there must be two criminal acts in separate jurisdictions to have occurred prior to their even being the two entries that would bring the departments together. Then the mechanism would only identify the two departments who have a common interest. There would be no exchange of intelligence data at that point. The two interested agencies would then communicate by some other means other than the NCIC system, and at that point it would be incumbent upon each of the agencies to determine the legitimacy of their law enforcement status and, also, the legitimacy of their investigative interest. Those kinds of safeguards would be built in.

To deal with the kinds of issues that you're talking about, I think that we're going to be confronted with those always and that we need to try to do the best job that we can to preclude that from occurring. And I think that in the thought process that we've gone through in developing this proposal, that those have been taken into consideration.

So, in essence, we would not be doing anything more than is being done now as far as exchange of information, but what it would do is give a more timely notification that two law enforcement agencies may have a common investigative interest.

Mr. EDWARDS. Thank you, Mr. Clarke. You've just upgraded the threshhold to the criminal standard.

Do you understand that, that it's not just reasonable suspicion or possible suspicion, it's this criminal standard, that a crime has been committed or is about to be committed?

Did you do that intentionally?

Is that the threshhold?

Is that going to be in the regs?

Mr. **Clarke**. We would be using, Mr. Chairman, the Attorney General guidelines for conducting an investigation, which sets forth quite clearly what the standards must be in order for an investigation to be initiated.

I might also add one other thing, that if, in fact, a law enforcement agency or a participating agency utilized this computer for the purposes that you described earlier, they, themselves, may be in violation of the law and subject to investigation. So, that is an additional safeguard that would be build in, also.

Mr. **Bayse**. Yes, sir, I would like——

Mr. **Edwards**. Mr. Bayse.

Mr. **Bayse** [continuing]. To follow up on that.

The new computer crime act that was passed late last year, certain offenses under that act would be—NCIC would be covered under that. And that's a pretty powerful statute in terms of penalties for somebody who would be abusing that information.

Mr. **Edwards**. Very good.

The last question I will have before yielding to Mr. Dempsey is this: You've had a great deal of difficulty in your criminal recordkeeping, in purging or getting rid of a record that shouldn't be there. You've had the famous lawsuit in Washington. And it came up again yesterday in a hearing. I believe your rule is, that the only way that a record can be removed from the FBI identification system is for the agency that entered the criminal record to request its removal.

Now, how are corrections going to be made in the Economic Crime Index in the NCIC?

Mr. **Nemecek**. I believe that the process that you are talking about relating to expungements deals with the establishment of criminal history records—arrests and court events. It's my understanding that there really is no specific Federal legislation, per se, for pursuing that.

There is, of course, a considerable amount of legislation at the local level that permits an expungement process. I believe we can differentiate that, though, from the type of information that is within our control, that we are entering. And I want to assure you that as we find inaccurate information in NCIC on a regular basis, we cancel records, ourselves. We encourage the agencies that entered the records to remove them, if we identify serious errors. If they don't, we cancel them ourselves. And we've really had no trouble in ensuring that inaccurate data is removed from the system. So, I guess I would distinguish between the types of records.

Mr. **Clarke**. Well, once again, we're talking about a test phase here. It is still in the developmental process. But the kinds of things that we are thinking about in connection with those considerations would be an audit program that periodically, for example every 6 months, that each agency would be supplied with a printout of those entries that they had made, requiring them to verify the accuracy of the information, and, also, to require them to certify that it is still a pending investigation. Failing in their doing that, the record would automatically be removed.

We would also—we are talking about incorporating in that, the requirements, the threshold requirement, is one thing, but also that it must be a pending, ongoing investigation. Once the investigation is closed, the entering agency would have the responsibility to remove it. So, using the audit process, we would have verification and a backup system to ensure that that is followed up on.

Mr. **Edwards**. I'm not convinced that the system couldn't be used by a crooked sheriff to tip off a friend that he is under investigation in Philadelphia and Miami, which could do damage to the investigations by Federal or State officials. I think it's impossible to build in a safeguard where that couldn't take place.

Mr. **Clarke**. It could probably take place initially if there was a crooked individual who had access to the system and he had a friend that said, "Hey, I think I'm under investigation down in Florida." And he goes to his crooked friend in another State and said, "Would you see what you can do about trying to find out if I'm under investigation down in Florida?"

So, the individual, the crooked law enforcement officer, sits down and enters into the system his name, identifying data, and he gets back a printout. But all that printout will say is that a Florida State law enforcement agency has made a prior entry. That's all it will say. For him to give any more information at that point, there would have to be some kind of personal contact between the crooked law enforcement authority and the authorities down in Florida.

So, the recognition that there is a law enforcement interest in Florida might be given to this individual, but the substance of the investigation would require a much further effort on this individual's part.

Mr. **Edwards**. So, you envisage strictly a pointer system.

Mr. **Nemecek**. Yes.

Mr. **Bayse**. Congressman Edwards?

Mr. **Edwards**. Yes.

Mr. **Bayse**. If I might follow up on that.

I believe that that point was addressed somewhat at the advisory policy board meeting, and that there is a great deal of control in the agency that enters the record, itself; that is, if they have those concerns about the impact that entry into the system might have upon their investigation, that they might defer or not enter the record into the investigation until such time as they did not feel it would have a serious impact on that investigation.

It's very much within the control of the agency that is running the investigation to make that decision prior to making that entry. And I would hope that that would minimize the opportunity for this to occur.

Mr. **Edwards**. I would hope. I can see that we're going to have to have more hearings on this subject—that you tell us next time about your thoughts on the rather immense new powers of the FBI. I know that's going to come up; not necessarily through us but from outside witnesses. You have all of these records in Washington, in a national agency that has to do with police matters. It is message switching, actually. When you have a pointer system like that, you are referring, but you alone have control over this system. I'm sure that's going to come up, and I think that you are going to have to address the implications of that and anticipate the problems that some people are going to see with Big Brother in Washington having this immense power that you already have and that you are going to increase immeasurably by trading this new information that is not a matter of public record. Most of the information in NCIC is public information.

Mr. **Bayse.** Mr. Chairman, in previous discussions concerning message switching—which we have avoided with the III system—the Director gave you assurances of the opportunity for a GAO audit on the part of the systems that handles these incoming and outgoing transactions. So, I think that the assurances he has given you bear on concerns you just brought up.

Mr. **Edwards.** Thank you.

Mr. Dempsey.

Mr. **Dempsey.** Pursuing the point again of the crooked law enforcement officer. He enters the name, he gets back that there are investigations underway on his friend in Florida.

Now at that point there is nothing to stop the crooked law enforcement officer from calling Florida and saying, "This Joe Blow, we have doubts about him, we think he may be involved in XYZ. What do you have on him?"

Mr. **Boyd.** You can, of course, do that; but remember, even at this early stage of just conceptualizing the system, as soon as the crooked sheriff, in your terminology, makes an inquiry, an automatic record is made of who it was. We know what terminal made it. That is subject to audit; so, the mere fact that he made the inquiry, he knows he is subject later to that being discovered by audit. He has not a valid case to back up why he made it, he's got the act of 84 which he may be in violation of. You can't stop him, but there are things like this that certainly act as deterents.

Mr. **Clarke.** Let me just add one point to that, also; is that the crooked sheriff or law enforcement office could do that now without the system, if his friend came to him and said, "I think I'm under investigation down in Florida. What can you find out?"

Mr. **Dempsey.** But now, each time the friend——

Mr. **Clarke.** He, himself, is now subjecting himself to criminal sanctions by using this system to do that. He could just as easily pick up the telephone and do the same thing by calling down to Florida and making the inquiry without ever using the system. By using the system, he subjects himself to potential sanction—criminal sanction.

Mr. **Dempsey.** But now he can do it nationwide. I mean, with the ECI he can do it nationwide with one call.

Mr. **Clarke.** With one entry.

Mr. **Dempsey.** With one inquiry.

Mr. **Boyd.** Yes; but again, under your example, he would not have to make 64,000 calls. If the person who thinks he's under investigation for something he did back in Florida, he would immediately know within a small area what number to call on the telephone.

Mr. **Nemecek.** Mr. Dempsey, if I could follow up on that.

One thing that NCIC was designed to do, and it does best, is to address the mobility of criminal activity in this country. And to the extent that, prior to NCIC, individuals could ellude, frequently, law enforcement efforts by leaving the boundaries of the State and going to other parts of the country, I think the very reason that NCIC would be selected for something like ECI is that there is a lack of ability to coordinate on a national basis. To the extent that we try to serve that mobility deficiency that we have, I think the resulting problems can be is that you do find out where these matters are being investigated. If you don't find it out, the opportunity to do it is not there. So, it most certainly is a balancing.

That's why we have the sanction and the audits and very much try to balance the need to have this coordination at a national level with the minimum amount of information in there that is necessary to just to identify where the record is. Then, let the agencies, themselves, control the information. But most certainly, when you identify where records are, you make it easier for that to occur, too.

Mr. **Dempsey**. Well, I'd like to pursue two points you just made, one of which is on the mobility of criminals and interstate crime.

Has the Bureau done any studies in the past 10 years concerning how many crimes are committed by people moving from State to State?

Mr. **Nemecek**. There have been a number of studies done. And increasingly, the figure is rising from the early days when NCIC was established. We were talking about less than a third, and we're finding, in terms of the criminal history records—there have been a number of studies done about those—not only by the FBI but various other outsiders. There is considerable evidence to indicate that we are increasingly mobile in terms of crimes being committed in multiple States.

We do know, in our III records, our Interstate Identification Index criminal history records, that we have a considerable amount of arrests in various States. So, I would suggest to you that there is increased mobility.

Mr. **Dempsey**. Do you know what those numbers are in terms of the number of crimes, the percentage of crimes, committed by people moving State to State?

Mr. **Nemecek**. Well, we're being very general. Most of the studies are done in the context of the type of crime. Is it just arrest records, or is it all investigations? I think probably the percentages would vary. I think we'd have to get more specific, and it may be a little difficult for me to give you that much detail at this particular time. But I would say that there is a high degree of mobility, whether we're talking about investigations being conducted in different States or whether we're talking about arrests in different States. The very fact that we have a III, in and of itself, to identify where these individuals are arrested and the multiple records that have been exchanged during our phase II testing I think are some evidence of that.

I could provide to you a copy of our phase II testing that documented the multiple-State arrest dissemination around the country.

Mr. **Dempsey**. And does that put it into the context of the number of crimes committed and the number of criminals arrested in the country?

Mr. **Nemecek**. We're talking about arrest-and-conviction data, we are not talking about crimes committed. We're talking about arrest-and-disposition data.

Mr. **Dempsey**. Well, even with arrest-and-conviction data, do you have the figures on percentage——

Mr. **Nemecek**. There isn't.

Mr. **Dempsey** [continuing]. Of crimes committed that are committed by people who have traveled interstate.

Mr. **Nemecek**. Not crimes, percentage of arrest-and-disposition data, yes. We're not transmitting crime data in III, just arrest-and-conviction data; but yes, we do have—in response to your question.

Mr. **Dempsey**. A second point that you raised was the point that the entering agency here is the one who will be responsible for the data. The question is: Are there any standards that will govern the entry of information at the local level?

Mr. **Nemecek**. Are we talking about the ECI file now?

Mr. **Dempsey**. That's right. Under the ECI.

Mr. **Nemecek**. Well, I can comment to you, generally, that we always have data quality standards for all files we have, for all fields of information that we have. I mentioned earlier that we do various computer edits. For example, if you enter a Social Security number, there's a certain format it must be.

Mr. **Dempsey**. I guess one question here is, will there be a threshhold that will apply to the user agencies before they can make an entry on an individual in the ECI?

Mr. **Nemecek**. I'm not—I think the answer is yes, if I understand your question. There are data quality requirements in terms of entering any information in NCIC.

Mr. **Dempsey**. Well, I think data quality is the range of information that you have on a person. My question is: How far down the road in an investigation do you have to get before you put a name in?

Mr. **Nemecek**. I believe you're talking about entry criteria now.

Mr. **Dempsey**. That's right, entry criteria.

Mr. **Nemecek**. We also have entry criteria for all files that we have.

Mr. **Dempsey**. What will it be for ECI?

Mr. **Nemecek**. Well, as I think we've indicated earlier, we're in the developmental stages. I believe that my companion has commented about the types of crimes in which the investigation would have to be conducted. They would have to be subjects in the investigation. I believe he's mentioned several of those today.

Mr. **Dempsey**. And what is the answer?

Mr. **Clarke**. As I said earlier, the ones for the FBI right now are the violations of title 18, section 1343, wire fraud; title 18, section 2314, interstate transportation of stolen securities; and, also, the new statute that is part of the Comprehensive Crime Control Act dealing with corporate and state securities. I believe that's section 511.

Mr. **Dempsey**. Yes; but the question is, when you're further down the road—and we're talking about a broader range of crimes than those three. We're talking about the types of offenses that associate attorney general Jensen was mentioning—what is, or what do you plan will be, the standard that governs the entry of an individual's name or of a corporate name into the ECI, when the system is opened up to all users and a broad range of white-collar crimes?

Mr. Clarke. I think we're getting further down the road in our discussions here than we are in our deliberations. We're talking right now only about a test phase, which would only include the FBI and certain Federal law enforcement agencies. And with those other participating Federal law enforcement agencies, even that criteria is not worked out definitely, yet, that they would be crimes that would be within their respective areas of jurisdiction. And that criteria would, in fact, be articulated, and it would be made part of the threshhold level for the entry. We have not developed that yet.

Mr. Dempsey. The concern is that the FBI would have little ability to control what a sheriff in a small town or any other person with access to the system could enter. Someone could just enter a name because he has a suspicion that's not based on anything in particular. The name goes in, and at that point a second inquiry on the same name will make it appear that there are two ongoing investigations.

This is not so much a question of the crooked sheriff, it's a question of the sheriff who over uses the system, or of an investigative agency that over uses the system, putting in names in almost a fishing expedition, to find what comes out.

Mr. Clarke. I think we discussed about the various types of audit procedures that would detect that kind of thing, also the onsight verification that there is conformance.

Mr. Dempsey. Excuse me for interrupting, but would you have to call each person to find out whether there is an investigation behind the entry?

Mr. Clarke. No; I think, as we discussed earlier, the audit procedure would be one on a periodic basis, where the records would be reviewed. Also built into the system would be the kind of mechanism, or if an agency was merely an investigation or information concerning an individual, and doing it only for inquiry purposes, they would enter it in and remove it in a short period of time, and the system would identify those kinds of entries and we would focus on those and address the misuse of the system.

And again, when you get into this area, we're talking about the potential of individuals subjecting themselves to criminal sanctions for doing that. So, there are things that we are concerned about that are issues that you are raising that we share with you. And we're endeavoring to articulate as best we can the guidelines and threshhold level for entry, the monitoring and the removal at the time that the investigation is terminated.

Mr. Dempsey. You mentioned that other alternatives are being considered for the location or format of the Economic Crime Index.

What other alternatives are being explored?

Mr. Boyd. One that we've explored so far is the use of a separate computer at FBI headquarters and one using the National Law Enforcement Telecommunications Systems, the telecommunications medium. Also one where we might possibly have our own telecommunications facility rather than NLETS. There have been various other things explored.

On all of those you have to consider, though, if you put something else up, what are you going to do privacywise and what are you going to do securitywise. Are you going to have such things as audit trails? What potential do you open for somebody else to misuse the system by gaining access which they should not have?

So, in all there have been perhaps 4 or 5 different alternatives that we've looked at.

Mr. **Dempsey**. Since many of the individuals in the ECI would not have been arrested for any crime—these are individuals who are suspects—how are you going to get identifying information on them?

Mr. **Clarke**. Well, I think that that is a fairly routine procedure, that we have many investigations that are ongoing, where we have individuals that we have identified as subjects of that investigation and whom we have acquired extensive information concerning their identity, prior criminal records. It would be accumulated in the same way that any investigation is conducted now. The level of certainty that that individual is responsible for the crime rises and continues to rise throughout the investigation until you get to the point where there is probable cause standards met for arrest and then into the judicial process. But it is not uncommon. It is, as a matter of fact, very common that individuals who are subjects or even suspects of a particular criminal activity, there is identifying data available on them.

Mr. **Dempsey**. On another related matter, am I right in understanding that as the file is now conceived there would not be entry of information on associates unless the associates, themselves, are independently the subjects of an investigation, perhaps for the same crime?

Mr. **Clarke**. That is correct.

Mr. **Bayse**. Yes.

Mr. **Dempsey**. For example, where one bank officer is under investigation for bank fraud, would the other officers of the bank be listed as his associates?

Mr. **Clarke**. Only if they, themselves, were involved in the criminal activity and subjects of that investigation simply because they are associates.

Now, if you get into the references to, like, organized crime members and their associates, the individuals who would actually be listed in the ECI would be individuals who we or the participating law enforcement agencies believe are involved and responsible for the commission of the criminal activity that has occurred.

Mr. **Dempsey**. In the materials that Mr. Jensen sent us on the ECI, there was reference to something described as the FBI Con Man Index.

Could you tell us what that is?

Mr. **Clarke**. The Con Man Index is a listing of individuals who are under investigation or have been convicted of crimes that use the same or similar types of scenarios, a "Ponzi," advance-fee scheme swindles, and that data base is maintained at FBI headquarters, and that is accessible through FBI offices only who have organized crime information system terminals or who have investigative computer systems, ISIS system terminals, located in their offices. They can query that data base to see if there is a prior record on that individual.

Mr. DEMPSEY. Is there any expectation here that the ECI would be run against or matched against something like the Con Man Index or one of the other internal files?

Mr. CLARKE. I don't think that we have put that out as any potential or even discussed that, that I know of.

Mr. DEMPSEY. Would there be any other types of matching that would take place with this file?

Mr. CLARKE. I'm unaware of any discussion or thought in that area.

Mr. DEMPSEY. Is anybody else aware of such?

Mr. NEMECEK. I don't believe it's been proposed as cross-matching with anything. It's meant to be a means of just identifying similar investigative interest, and that's it.

Mr. DEMPSEY. Turning to a subject not directly related to the ECI, in a recent letter to the subcommittee, Director Webster mentioned certain internal procedures that have been implemented for the NCIC, including the use of flags placed on AIDS records and off-line searches of III records pertaining to certain individuals.

The first question is: When were these procedures implemented? Perhaps this is a question for the Technical Services people; although, Mr. Clarke, you may answer to if you are familiar with this.

Mr. NEMECEK. Depending on, specifically, which one you are talking about, quite recently, within the last year.

Mr. DEMPSEY. The letter states that the procedure applies to four categories within the III: wanted persons, FBI informants, individuals in the Witness Protection Program and undercover agents.

Are these four categories illustrative or are they exclusive?

Mr. NEMECEK. Are we talking about flags in relationship to the III system, the NCIC system?

Mr. DEMPSEY. Yes.

Mr. NEMECEK. Yes.

Mr. DEMPSEY. Also with respect to the AIDS system.

Mr. NEMECEK. I really wouldn't be able to comment on the AIDS system, per se. To the extent the III system would be utilized for access to records in the AIDS system, it's exclusive, yes.

Mr. DEMPSEY. Now, when an inquiry is made to III, that inquiry is recorded on a log; is that correct?

Mr. NEMECEK. Yes.

Mr. BAYSE. Yes.

Mr. DEMPSEY. And am I right that those logs are then provided to the AIDS, to the Ident Division; is that right?

Mr. NEMECEK. For certain restricted purposes, yes.

Mr. DEMPSEY. And what are those purposes?

Mr. NEMECEK. The ones that have been identified here.

Mr. DEMPSEY. Are these the only four purposes that they use those logs for?

Mr. NEMECEK. I believe I just answered that question. Yes. In relationship to III, yes.

Mr. DEMPSEY. The III logs are used by Ident only for these four purposes?

Mr. NEMECEK. Yes. I believe that's the answer. I answered that twice.

Mr. **Dempsey**. And why was APB approval not sought for this use of the III logs?

Mr. **Nemecek**. In terms of undercover operations, there were certain protective considerations that had to be addressed. In terms of the Witness Protection Program, they have been advised. It was a topic paper at the last Advisory Policy Board meeting. They are aware of that. In terms of wanted persons, that will be addressed on their agenda next time.

Have I covered them all? Is that it?

Mr. **Clarke**. Warrants Outstanding?

Mr. **Nemecek**. Warrants Outstanding is information that's already in the wanted person file, and if I understand your question, we're just talking about a cross-referencing. I guess it's good to point out that the two systems of criminal history records and other information are mutually exclusive. That is, if you make an inquiry to find out whether someone is wanted, it does not automatically cross-check the III system and vice versa. So, we would be talking about merely cross-referencing of the information, itself.

Now, to the extent that we must start addressing what information is in AIDS, what inquires used to come through the Identification Division that will now be coming into the III system, we must address the effectiveness of the program as it applies in the III system. To the extent that we are in a transition from a centralized system to a decentralized system, we have to address those legitimate concerns regarding witness protection, protection of our undercover people, and the identification of wanted people through utilization of criminal history records, which is very sizable on an annual basis in terms of the number of people that are located that are wanted through this process.

I hope that is responsive to your question.

Mr. **Dempsey**. One of the concerns here is whether this isn't message switching, whether this isn't a situation where the FBI maintains information on the inquiries to the system and a situation which, therefore, allows the FBI to retain a data base by which certain individuals are being followed.

Mr. **Nemecek**. The definition of message switching, as established by the House of Representatives, defines it as accepting, holding, and, when an available line is free, the forwarding of information to another agency. Regarding the comparison that you're drawing with the maintaining of log tapes which must be maintained for good management, data processing practices, and various other reasons, I don't see the comparison at all in that respect.

Mr. **Boyd**. If the concern of counsel is so-called tracking, this is not the system that aids in tracking. You would do that with the hot files, the queries on the wanted persons as they're coming in, say, from the police making the stop. Remember, these are running against the III file, which is a request for criminal history, normally, in fact almost exclusively, not made by a policeman out on the beat.

Mr. **Dempsey**. How many individuals are we talking about, approximately, with these four categories?

Mr. **Nemecek**. I wouldn't have the exact figures. In terms of those who are informants, et cetera, I probably would not be able to divulge it if I had it. In terms of the Witness Security Program, we're talking about a very small number, in the low thousands.

Wanted persons were always limited by the ability to specifically identify a wanted person. I would say we're talking in the tens of thousands, potentially, for wanted persons; keeping in mind that the mechanism is to utilize an arrest event occurring, in order to further identify and locate a person who is wanted, for whom a warrant is outstanding.

Mr. DEMPSEY. How many individuals are currently in the Secret Service file?

Mr. BOYD. 96.

Mr. DEMPSEY. A related area of concern are the proposals pending with respect to the III system, which, again, would result in certain cross-references between files and which would make certain third-party notifications.

Now, wouldn't these changes, if adopted in their totality, amount to a fundamental departure from the concept of a decentralized criminal history record system? That is, wouldn't these be more like the Ident system or the AIDS system?

Mr. NEMECEK. I would like to answer the last part of your question as being "no." It is not a departure, but I would suggest that the factual basis on which you formulate this proposal is not correct. The cross-searching of files is not intended to provide third-party notification. We are talking about what I described a little bit earlier, and that is that we have basically separate systems for making inquiries of criminal history records versus inquiries on wanted and missing people. We do not permit an agency to make a single inquiry and find out if the individual is wanted, if he's missing, if he's in the Secret Service file, if he's in III.

That's not to say that all of the information is not there and that an individual at a terminal cannot make a separate transaction and find out. He can. We're talking about the efficiency in operations and the occasional failure of agencies to make all of the inquiries that they should be making. And that's all we're talking about when we talk about cross-referencing of transaction inquiries. We're talking about efficiency and effectiveness of inquiries, themselves.

Mr. DEMPSEY. Correct me if I'm wrong, but III was originally conceived as a way of decentralizing the criminal history records system, so that States would maintain those records; the Federal Government, the FBI, would provide a pointer system. But now the pointer is doing more than pointing, it's telling people other things. It's saying, "You asked for his record, but, oh, by the way, he is wanted, he is missing, he's a firearms offender, this is his parole or probation status."

Mr. NEMECEK. III is still a decentralization of recordkeeping responsibility for arrest-and-disposition information. Notations that an individual is arrested and notation that an individual has a prior arrest for firearms or for violent offenses are part of the criminal history record. To the extent that we have that data, we have that information in an AIDS file record which has not been decentralized. We make that information available in a more highlighted way.

But when you talk about cross-searching of files, we're talking about something different than decentralization of recordkeeping responsibility. We're talking about only making what records we have at this time a cross-check, to see if there are other records or give indicators. We're talking about two different things.

Mr. Dempsey. Am I right that the purpose of III is not to give the State whatever you have; the purpose of III is to tell the inquiring agency to check with somebody else?

Mr. Nemecek. Absolutely. We have 4.8 million records that we're doing that on right now.

Mr. Dempsey. But if that is the purpose, namely, "check with somebody else," here you're doing that, plus you're saying, "But, by the way, we have some information on this person; information that you didn't ask for, but here it is anyhow."

Mr. Nemecek. I don't believe we're saying we in terms of the FBI, we are saying and advising the individual is wanted and that there is a warrant outstanding for his arrest.

Mr. Dempsey. Even though the agency, the inquiring agency, didn't ask for that.

Mr. Nemecek. That's right. And that is not an uncommon practice at the State level, by the way. It is considered to be a part of a criminal history record in most data bases the fact that an individual is wanted.

Mr. Dempsey. One question on the work study.

The study is designed to consider a range of issues, and we talked about what types of privacy and data quality concerns there are.

Is there any mechanism for insuring that the views of outside organizations, including nonlaw enforcement organizations, concerned with these issues and even individuals concerned with these issues, academics or scholars, will be given formal consideration in the study?

Mr. Bayse. Well, the study will be carried out by an independent organization to begin with. A contract research center which is independent of any other agency in the Government, other than the one which has it as a sponsor, the Advisory Policy Board, which carries out its open meetings, takes into account the views of its membership, and has public input; and as well as we do here in these hearings, would always be taken into account in the design of the system and in conducting a study. In particular, the environmental assessment will take a look at the environment for civil liberties and privacy concerns. Those will be raised both by the Congress, in public, and by the private citizenry.

Mr. Edwards. Was that in the contract that you signed with MITRE, that they're supposed to do that kind of work, too, and include those subjects in their study?

Mr. Bayse. The contract is yet to be signed; but yes, that will be part of this environmental assessment, in the area of privacy, and security, and civil and constitutional rights concerns.

Now, the study effort is going to have to be focused in some respect, to get this done within the resources we have, on specific issues that come out in a form that can be taken into account analytically.

Mr. Dempsey. Well, thank you. That's all I have.

Mr. **Edwards**. I have no further questions. We thank you for spending this time with us, we appreciate it very much.

Mr. **Clarke**. Thank you.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

ADDITIONAL MATERIAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHIRLEY JONES, ET AL * CIVIL ACTION
VERSUS * NO. 83-703
CITY OF NEW ORLEANS, ET AL * SECTION I(4)

* * * * * * *

CONSENT DECREE

This Consent Decree is entered into by all the parties to the instant cause of action as a means of resolving all of the issues presented in this litigation. Because much of the relief described herein is prospective in nature, the Court will maintain jurisdiction until such time as the parties agree, or the Court is satisfied that the terms of the Consent Decree have been complied with, and that further supervision by the Court is unnecessary. Any dispute which may arise concerning the implementation of the terms of coverage of the Consent Decree shall be submitted to the Court for final resolution.

No provision of this Consent Decree should be construed as an admission of liability on the part of the City of New Orleans or the Sheriff for the Parish of Jefferson. The City and Sheriff expressly deny any liability in regards to the incident sued upon.

HEARING
DOCUMENT No.

It is understood and agreed that, upon approval of this Consent Decree by the Court, the terms herein shall have the full force and effect of a judgment; and that the parties hereto are under the order of this Court as follows:

1. The City of New Orleans through its New Orleans Police Department, (hereinafter referred to as NOPD), and Harry Lee Sheriff of Jefferson Parish, Louisiana, (hereinafter referred to as Sheriff), agree that they, and every other agency utilizing information contained in the NOPD computer system, shall follow the privacy and security of criminal history record information regulations contained in 42 USC §3789(g)(a-d), et. seq. 28 USC §534 et. seq., 28 CFR Chap. 1, §20; LSA-R.S. 15:575 et. seq.; LSA-R.S. 44:951 et. seq.; and the regulations promulgated by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

2. NOPD agrees to incorporate all the elements of this Consent Decree into a "Supplemental Users Agreement" with all agencies having the ability to review, add, or delete information in the central NOPD computer system. (Said agencies are hereinafter referred to as "User Agencies"). All user agencies shall abide by the terms and conditions of all user agreements subject to the termination of their participation in and access to the Motion system.

3. NOPD agrees that it and each user agency shall require that each person who reviews, adds, or deletes any information in the NOPD computer system shall utilize an individual identification number which shall be in addition to the number which is entered to identify the terminal and the agency. This audit trail shall be implemented within 90 days of the signing of this agreement.

4. NOPD agrees that it shall keep records of each occasion that an individual in any agency calls a person's criminal record up on the computer to review it. This record shall be synonymous with the audit trail referred to in paragraph 3.

5. The NOPD and Sheriff agree that they and each user agency shall employ the systematic cleaning and up-dating of records on outstanding arrest warrants every six (6) months.

6. NOPD agrees that it and each user agency shall require the initial training of any individual who has the ability to view, add, or delete information on the central NOPD computer system. This training shall be designed to familiarlize the trainee with relevant laws and regulations pertaining to the privacy and security of criminal history records and the penalties for failure to adhere thereto.

7. NOPD agrees that it and each user agency having the ability to review, add or delete information from the NOPD computer system shall, on an annual basis, reiterate to their employees the laws and regulations pertaining to the privacy and security of criminal history records and supplement said training as new laws and regulations are promulgated.

8. NOPD agrees that it and each user agency shall place at each terminal, which has access to the information contained in the NOPD computer system, a warning on that terminal that states "The use of this computer involves issues of privacy and security which are governed by federal and state law. This information can only be released to authorized criminal justice agencies." Additionally, each terminal operator shall have immediate access to a bound copy of the relevant Louisiana Privacy and Security Regulations published by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

9. NOPD agrees that it and each user agency in addition to the periodic warrant validation referred to in paragraph 5, shall certify the correctness of the information contained in each warrant and record and report any revisions made to existing warrant records to NOPD. NOPD agrees to maintain a record of these revisions. Each user agency will review once a year, in an annual audit, the record of revisions made to existing warrants. These errors shall be reviewed to determine whether improvements should be made in the supervision, training or programming of the computer system or personnel.

10. NOPD agrees that they and each user agency shall provide initial training and continuing education to its personnel who have the ability to detain, interrogate, or arrest persons as a result of outstanding warrant information contained in the NOPD computer system. These personnel shall be trained to comprehend the full range of information at their disposal in evaluating whether the subject that they are dealing with is indeed the person who is wanted. The full range of information shall include, but shall not be limited to: name, address, sex, height, weight, race, date of birth, social security number and other physical descriptors.

11. NOPD agrees that it and each user will promptly verify warrant information when an arrest is made based upon a warrant.

12. NOPD agrees that it and each user agency shall certify in writing each year that they are complying with the terms and conditions of this consent decree. Said certification shall be available, along with said annual audit to members of the public subject to the requirements of the Louisiana Public Records Act.

13. The parties hereto agree that if their obligations under the terms and conditions of this Consent Decree are not followed, this case may be re-opened without prejudice in accordance with the preamble of this Consent Decree.

14. The attorneys for plaintiffs shall submit affidavits to the defendants within thirty (30) days of the hours and expenses incurred in the litigation of the instant lawsuit. Defendants shall have ten (10) days thereafter to respond to plaintiff's attorneys affidavits. If plaintiff's attorneys and defendants can not stipulate to the hours and/or compensation, then plaintiff attorneys shall submit the matter to the Court for hearing.

New Orleans, Louisiana, this 5th day of February, 1986.

UNITED STATES DISTRICT COURT
MAGISTRATE

APPROVED:

ATTORNEYS FOR DEFENDANTS:	ATTORNEYS FOR PLAINTIFFS:
THOMAS P. ANZELMO ATTORNEY FOR THE CITY OF NEW ORLEANS	WILLIAM P. QUIGLEY
	Steven Scheckman STEVEN SCHECKMAN
Fred Schroeder FRED SCHROEDER ATTORNEY FOR HARRY LEE, SHERIFF OF THE PARISH OF JEFFERSON, LOUISIANA	Mark S. Goldstein MARK S. GOLDSTEIN

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Deputy Clerk, U.S. District Court
Eastern District of Louisiana
New Orleans

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

May 22, 1985

Honorable Don Edwards
Chairman
Subcommittee on Civil and
  Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is to provide you with certain material discussed during my testimony on April 25 regarding the Economic Crime Index, and to respond further to your inquiry of March 19, 1985.

The enclosed agreement between the Department of Justice and the four regulators of financial institutions, and the summary of the agreement's rationale, should address the questions regarding the problems of bank failures. You will note in the agreement the expansion of the concept of the Fraud and Corruption Tracking (FACT) System to create a tracking and information system in the banking area. Under the FACT system, a referral form is submitted only in cases involving fraud against the government. Due to the contracting, grant, and loan guarantee programs of the government, an initial victim could be a private organization, with the ultimate victim being the Federal Government. The banking referral system contemplated by the agreement will parallel the FACT system, but not be a part of it.

It is difficult at the present time to answer all of the eight questions posed in your letter of March 19, due to the preliminary nature of the ECI project. However, the answers to the first four questions are:

1) Yes, an ECI is being established.

2) Selected information relating to a law enforcement agency's open investigation on an individual or organization will be in a file.

3) No one will have "access" to the file. It will be a pointer system that will cause a notice to be generated to an agency that has an open investigation, and that has entered it in the system, once a second investigation is entered on the same subject.

4) Yes, the file will include information on persons never arrested or convicted for a crime.

The answers to the last four questions will be dependent on determinations made in the course of further work on the project. As the ECI is developed, we will be able to answer all these questions more completely.

Sincerely,

D. Lowell Jensen
Associate Attorney General

Enclosures

AGREEMENTS AND RECOMMENDATIONS OF THE JUSTICE DEPARTMENT - SUPERVISORY AGENCIES WORKING GROUP

This document embodies the areas of agreement and recommendations of the Working Group created in December, 1984, to address problems and promote cooperation toward the goal of improving the federal government's response to white-collar crime in the nation's federally-regulated financial institutions. The Working Group is composed of senior officials of the U.S. Department of Justice Criminal Division, the Federal Bureau of Investigation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. The four named regulators of financial institutions are referred to herein as the "Supervisory Agencies."

After an initial meeting between the Attorney General and other Justice Department officials and the heads of the Supervisory Agencies, an agenda was established and the Working Group was formed to address the matters contained herein. This document represents the results of concerted effort by the Working Group to tackle and resolve issues of major significance relating to the detection, reporting and prosecution of bank-related crimes.

The Working Group has focused particularly on white-collar crimes by "insiders" of financial institutions, which have plagued a large number of institutions with resulting large losses to the FDIC and FSLIC insurance funds. In response, the Working Group has improved the entire referral system for suspected bank fraud and abuse, developed avenues for better communications, coordination, and tracking, established new training opportunities, and determined to support certain legislative proposals as set out herein. With improved cooperation overall, the Supervisory Agencies and the Justice Department will be better equipped to respond more effectively to criminal conduct involving the nation's financial institutions. Following this document is a separate summary that elaborates upon certain of the agreements and recommendations contained herein.

The Criminal Referral Process

1. The Working Group recognizes the pivotal role of the referral process in ensuring an effective law enforcement response to crimes involving financial institutions. As envisioned by the Group and set out herein, the referral process is more than simple notification; it is a procedure for notification and continuing interest and coordination in which the Justice Department enlists the help of the Supervisory Agencies to detect and understand suspected crimes, and the Supervisory Agencies regard effective criminal law enforcement as one arm of their own enforcement efforts. This process will be sustained by regular personal

contact between the parties hereto at both the national and local levels, and by a sustained interest in and attention to each other's needs.

2. The Working Group endorses the use of a uniform method for reporting suspected criminal conduct to the U.S. Department of Justice (hereafter "Justice Department" with the understanding that, unless specified otherwise, the term refers to the Department's Headquarters in Washington, D.C., the applicable U.S. Attorneys and the FBI - both Headquarters and District offices.) The Working Group has developed a uniform referral form for this purpose to be used by the Supervisory Agencies and by their regulated financial institutions. The purpose of the referral form is to promote the transfer of complete and accurate information on key points deemed most important by the Justice Department for its assessment and evaluation of possible criminal cases. In connection with the referral form, the following matters also have been agreed upon:

a. The proposed referral form has been designed so that possible crimes involving losses of less than $10,000 and not involving "insiders" may be reported on a "short-form" portion of the referral form so that the numerous cases of teller defalcations involving small amounts of loss can be reported with minimal burden to the preparer.

b. The proposed referral form will be adapted to each Supervisory Agency's particular procedures, and the Agencies will strive to assure uniformity in the form and its instructions in all substantial respects.

c. The Working Group members will work together in an effort to obtain OMB and other required clearances for the referral form's use.

d. The Supervisory Agencies will strive to implement a regulation or other formal policy that requires their regulated financial institutions to make criminal referrals in all cases directly to the appropriate criminal authorities, with copies to their principal Supervisory Agency.

e. The Working Group will be responsible for monitoring each Agency's completion and adoption of the referral form, the referral regulation or policy statement, necessary approvals, and implementation of the form's use, with the goal of having the referral form in use by each of the Supervisory Agencies as soon as practicable.

3. The Supervisory Agencies will establish procedures to review the criminal referrals made by their regulatees and will make referrals directly where (a) the referral made by the financial institution is deemed inadequate, or (b) the suspected criminal conduct discovered by the Supervisory Agencies has not been reported by the regulatee(s).

4. The existence of the referral form shall not prevent a Supervisory Agency from making a more detailed written referral, and shall not prevent referrals by telephone or personal contact in situations where immediate contact of the Justice Department is advisable.

5. When referrals are made by the Supervisory Agencies, they shall be made at an early stage, that is, when the Agencies' representatives first obtain evidence to support a belief

that a crime has been or may have been committed, with allowances for reasonable periods of time for review of the proposed referral under each Agency's established procedures. The referral of suspected criminal conduct shall in no way restrict the Supervisory Agencies from continuing their own examinations or investigations into the same conduct in order to carry out their regulatory responsibilities, unless they are requested to cease or suspend such activity by Justice Department representatives in connection with an ongoing criminal investigation or prosecution.

6. Following the dispatch of a criminal referral by a Supervisory Agency, that Agency shall segregate the documents and information relative to the referral or establish procedures to ensure that such documents and information are readily retrievable if the Agency is requested to produce them by the Justice Department.

7. Copies of the following types of referrals shall be forwarded to the Fraud Section of the Justice Department's Criminal Division and to the FBI Headquarters in Washington, D.C. by the Supervisory Agencies: referrals involving losses above an agreed upon amount, referrals disclosing possible crimes of particular significance to the Agencies (including criminal misconduct by "insiders" of financial institutions) or that otherwise are of national impact, and referrals that involve significant criminal conduct in more than one jurisdiction.

8. In connection with significant cases as described in the preceding paragraph, the Supervisory Agencies are encouraged to seek the active assistance of the Fraud Section. Such assistance

should be sought, to the extent practical, at the time of or, in appropriate cases, in advance of the Agencies' referrals to the U.S. Attorneys. The Fraud Section and FBI Headquarters will assist the U.S. Attorneys in their evaluation, investigation, and/or prosecution of such significant cases, and where appropriate, will coordinate multi-jurisdictional cases. In appropriate cases, the Fraud Section also will supply prosecutorial staffing.

9. The Supervisory Agencies will strive to communicate directly with the U.S. Attorneys' offices about significant criminal referrals involving their regulated financial institutions. It is understood that oral and written communications follow-up, and coordination are encouraged between the local offices of the Supervisory Agencies and the U.S. Attorneys' and local FBI offices. These parties shall communicate their concerns about particular cases and engage in dialogue to resolve problems. Thereafter, the Justice Department Fraud Section will entertain inquiries, complaints, and "appeals" of declinations by U.S. Attorneys with respect to referrals made by the Supervisory Agencies or their regulated financial institutions on cases believed by the Agencies to be significant.

Coordination, Cooperation and Information-Sharing Between the Working Group Representatives

10. Each of the Working Group members has exchanged information that identifies appropriate points of contact (by name, address and telephone number) for making criminal referrals, for seeking assistance with investigations, and for resolving any problems with coordination. The Justice Department also has identified

individuals in U.S. Attorneys' offices and FBI field offices who are experienced in financial institutions crimes. All Working Group members are responsible for keeping the "contact lists" updated on a reasonably current basis.

11. The Working Group members will actively encourage periodic meetings between representatives of their regional or district offices. For example, the regional management of the Supervisory Agencies are encouraged to get acquainted and maintain contact with the U.S. Attorneys and FBI managers for their region, and to explore whether there are any problems in communications or coordination that can be resolved at that level.

12. The Supervisory Agencies will review current regulations, delegations, and procedures to determine if changes are required to assure expeditious responses to requests by the Justice Department for written materials or for direct assistance by representatives of the Supervisory Agencies. If needed, appropriate changes will be made to such regulations, delegations and procedures.

13. The Working Group members will cooperate fully in the sharing of relevant information, subject only to applicable legal restrictions, and will assist one another in assuring that information so shared may be used by the recipient(s) in appropriate criminal, civil or administrative proceedings.

14. The Justice Department will implement procedures to improve its reporting of information to the Supervisory Agencies. In particular, it is agreed:

a. The disposition of criminal referrals sent to the Justice Department pursuant to paragraph 6 above, shall be reported by the Justice Department to the appropriate Supervisory Agency that forwarded the referral. In addition, U.S. Attorneys will be instructed to notify the referring Supervisory Agency of the disposition of referrals made by such Agency.

b. The Justice Department will instruct the U.S. Attorneys to notify the appropriate Supervisory Agency when indictments and convictions are returned against "insiders" or employees of financial institutions, particularly when such individuals continue to be affiliated with the financial institutions at the time of the indictments or convictions.

c. Information obtained by the Justice Department during criminal investigations will be shared with the appropriate Supervisory Agencies where such information may assist the Agencies in carrying out their regulatory responsibilities, subject only to applicable legal restrictions or where confidentiality is essential to maintain the integrity of a criminal investigation.

15. In order to assist the Justice Department in its execution of the information-sharing described in the preceding paragraph, the Working Group supports an amendment to Rule 6(e) (Fed. R. Crim. P. 6(e)), which would permit the Justice Department to petition the appropriate Court for permission to make available to the appropriate Supervisory Agency(ies) information obtained pursuant to the Grand Jury process that would assist the Agencies in carrying out their regulatory responsibilities.

Tracking of Criminal Referrals and Investigations and Information Systems

16. The Justice Department Fraud Section will develop a tracking system to monitor significant criminal referrals and investigations involving federally regulated financial institutions:

a. This tracking system will be initiated by inputting those referrals of which copies have been sent directly to the Fraud Section pursuant to Paragraph 7 above.

b. Information from the Fraud Section's tracking system will be shared with the Supervisory Agencies, subject only to applicable legal restrictions.

17. The FBI will input *all* of the Supervisory Agencies' and regulated financial institutions' criminal referrals on its FOIMS computer system. Consistent with applicable legal restrictions and the need to maintain confidentiality concerning certain ongoing criminal investigations, the FBI will share information from the FOIMS system with the Supervisory Agencies.

18. Pursuant to previous agreements between the Supervisory Agencies, criminal referrals and other information about individuals are being shared by and among the Supervisory Agencies. The Agencies have agreed to coordinate this process in connection with their respective processes of computerization of information and to make such information available to one another and to Justice Department representatives upon request, subject only to applicable legal restrictions.

Training

19. The Working Group agrees to coordinate and share training courses and other training resources in the area of white-collar crimes involving financial institutions. In particular:

a. The FBI has agreed to make at least 30 slots available for training examiners or other employees of the Supervisory Agencies in a special "Bank Failure In-Service" course, which will be presented in Quantico, Virginia, during July 1985. The FBI also will present regional training programs in which the Supervisory Agencies will participate in 1986. All such training by the FBI will focus on investigative techniques and problems in cases involving financial institutions.

b. The Supervisory Agencies will explore with the Federal Financial Institutions Examination Council ("FFIEC") whether it will assume responsibility for presenting a white collar crime course in a form similar to that currently presented by the Office of the Comptroller of the Currency ("OCC"). The Working Group members will encourage the FFIEC to present such a training course, which will be available to representatives of the Supervisory Agencies and the Justice Department.

c. While the FFIEC is considering the establishment of the white collar crime course, and/or in the event that such a course is not established by the FFIEC, the OCC will continue to make slots available to the other Supervisory Agencies and the Justice Department in its "White Collar Crime Seminar" given periodically during each year.

d. The Justice Department will develop a training course (or a segment of a course) for Assistant U.S. Attorneys that focuses on the investigation and prosecution of white collar crime involving federally-regulated financial institutions, and will strive to make slots available to the Supervisory Agencies for appropriate representatives to attend.

The Right to Financial Privacy Act

20. The Working Group has agreed to support a clarifying legislative amendment to the Right to Financial Privacy Act of 1978 ("RFPA") (12 U.S.C. § 3401 et seq.) relative to transferring information to law enforcement authorities. The amendment endorsed by the Working Group is one that would permit the transfer of financial information lawfully in the possession of one government authority (such as a Supervisory Agency) to another government authority (such as the Justice Department) for a law enforcement purpose within the jurisdiction of the receiving authority, without notice to the customer.

21. The Justice Department has found that the RFPA notices to customers can be damaging to the conduct of criminal investigations. Therefore, until a clarifying amendment is enacted the Supervisory Agencies will implement procedures to ensure that criminal referrals are made in a manner that does not require notices to customers. Accordingly, it is anticipated that, in some instances, referrals may omit the names of significant suspects or

witnesses and/or copies of supporting documentation from protected customers' records. In such cases the Justice Department will utilize Grand Jury subpoenas to compel production of the omitted information from the Supervisory Agencies or directly from their regulated financial institutions.

22. The Working Group will, by written request to the Justice Department, seek a clarification of the May 22, 1979, opinion to Deputy Attorney General Civiletti from the Office of Legal Counsel relative to criminal referrals by the Supervisory Agencies and the requirements of the RFPA concerning customer notices in connection with such referrals.

The Bank Bribery Act

23. The Working Group has addressed numerous questions and concerns relating to the Bank Bribery Act. Pub. L. No. 98-473, § 1107, 98 Stat. 2145 (1984), 18 U.S.C. § 215. In particular, the Group is exploring the possibility of clarifying the scope of the Act by regulations or policy statements issued by the Supervisory Agencies and/or by written guidance from the Justice Department. These matters will continue to be pursued by the Working Group.

Continuation of the Working Group

24. The Working Group unanimously agrees that the communications and cooperation initiated by the Group have been positive and productive. Accordingly, the Working Group will continue to meet on a regular basis to discuss implementation of and any problems related to the matters set out herein and to share

information about specific criminal cases and other matters that may be of interest to all members of the Working Group.

Dated: 2 April 1985

U.S. Department of Justice	Federal Bureau of Investigation
By: Edwin Meese III	By: William H. Webster
Board of Governors of the Federal Reserve System	Office of the Comptroller of the Currency
By: Preston Martin	By: C. Todd Conover
Federal Deposit Insurance Corporation	Federal Home Loan Bank Board
By: Margaret L. Egginton	By:

SUMMARY OF THE RATIONALE FOR CERTAIN OF THE MATTERS SET FORTH IN THE ATTACHED AGREEMENTS AND RECOMMENDATIONS OF THE JUSTICE DEPARTMENT-SUPERVISORY AGENCIES WORKING GROUP

Each of the numbered paragraphs in the attached "Agreements and Recommendations of the Justice Department-Supervisory Agencies Working Group" represents the results of lengthy discussion and consideration by the Group. This summary does not attempt to discuss all of the reasons for the many agreements and understandings that have been reached, but only to expand upon the rationale for certain of the more significant provisions.

The Criminal Referral Process

Paragraphs 1 through 6 of the Working Group Agreements set forth procedures for the use of a uniform criminal referral form by all of the Supervisory Agencies and by the financial institutions regulated by them. The proposed form itself is the product of considerable effort by the Working Group and is designed to relay the type of information deemed most important by the Justice Department for its assessment and investigation of matters referred by the Supervisory Agencies and their regulated financial institutions. The form and its detailed instructions will assure that such referrals are an effective means of notifying criminal law enforcement authorities of suspected offenses. In particular, a referral made by use of the form will identify the suspected criminal violation both in summary and in detailed form by instructing the preparer to give a chronological and complete account of the suspected violations by relating key events and identifying significant documents and potential witnesses.

While the proposed referral form requests considerably more information than often has been provided in the past by the Supervisory Agencies and their regulated financial institutions, it is not intended to delay the referral process while all answers to the questions are gathered. (See Paragraph 5.) In fact, if certain information is not readily available to the preparer, he/she will be instructed to complete the known information and not delay the transmittal of the form. Moreover, the Working Group has designed a referral form that has a "short form" version for referrals that disclose suspected losses under $10,000 that do not involve "insiders". In terms of the volume of referrals received at this time by the Justice Department, such "smaller" crimes represent the overwhelming majority of cases reported. The "long form" version of the referral form will be utilized for all other criminal referrals by the Supervisory Agencies and their regulated financial institutions. (Paragraph 2(a).)

It is recognized that the actual approval of the form by each of the Supervisory Agencies and clearance for its use by OMB will take some time. The Working Group has agreed to cooperate fully in achieving use of the form in a substantially identical format. (Paragraph 2(b), (c), and (e).) Also key to the new referral process will be the implementation of regulations or other formal requirements by each of the Supervisory Agencies that require referrals to be made directly by their regulated

financial institutions (Paragraph 2(d)). Only if the referrals made by the financial institutions are inadequate or if a referral has not been made by an institution, will the Supervisory Agencies make the referral directly (Paragraph 3), its being understood that the Supervisory Agencies will promptly undertake to make referrals themselves in both circumstances, and will not rely on the institutions to do so unless the Agencies are assured that the institutions have made the referrals in a satisfactory manner. This procedure was adopted in the interest of administrative economy by the Supervisory Agencies, who believe that their limited resources will better be spent preparing the limited number of referrals on such matters as serious abuse by "insiders" of financial institutions, which referrals are unlikely to be made by the institutions themselves.

The Working Group stresses that the existence of the referral form is not intended to prevent referrals by telephone or personal contact in emergency cases or any situation where the Agency believes that evidence or witnesses could disappear if there are delays in making the referral. (Paragraph 4.) Similarly, the form is not intended to deter the preparation of more detailed referrals as deemed appropriate by the Supervisory Agencies. (Paragraph 4.)

The Working Group considered whether to identify an evidentiary standard for when criminal referrals are to be made, such as when "substantial evidence" of a crime has been discovered, but determined not to do so. Often the preparers of criminal referrals are not in a position to make such determinations, particularly when the suspected crime requires evidence of "willfulness" or an "intent to defraud." These are decisions to be made by Justice Department representatives, who prefer to be advised of the potential crime early when it is first suspected by the Supervisory Agencies so that Justice may develop the facts toward evaluation of a criminal prosecution. Accordingly, Paragraph 5 of the Working Group's Agreements provides that referrals of suspected criminal violations shall be made at an early stage when the Supervisory Agencies first obtain evidence to support a belief that a crime has been or may have been committed.

Of particular note is the role that the Fraud Section of the Justice Department's Criminal Division has agreed to assume in the criminal referral process. (Paragraphs 7 through 9.) The Fraud Section will assist in the Department's consideration and coordination of significant referrals (Paragraph 8), and will entertain inquiries, complaints, and "appeals" by the Supervisory Agencies concerning referrals made to U.S. Attorneys' offices (Paragraph 9).

Coordination, Cooperation and Information-Sharing

Paragraphs 10 through 15 detail areas in which the Working Group has established points of contact (Paragraph 10), encouraged communications at the regional level (Paragraph 11), and agreed to improve their responsiveness to requests for information from one another (Paragraphs 12-15.) Each of the Working Group members currently has legal or procedural restrictions that limit or impede access to one another's records.

Certain of these restrictions are statutory, such as the Right to Financial Privacy Act and Grand Jury Rule 6(e), in response to which the Working Group are supporting legislative amendments. (See Paragraphs 15 and 20.) The Working Group members will assure that any other impediments are only those actually required by law or regulation or necessary to preserve the integrity of information or investigations.

The proposed amendment to Rule 6(e) set out in Paragraph 15 would allow Justice Department representatives to petition the appropriate Court to permit the sharing of information obtained pursuant to the Grand Jury process, with the Supervisory Agencies. Often the receipt of grand jury information could facilitate the Supervisory Agencies' taking administrative or judicial action to prevent harm to financial institutions under their supervision, and/or to prevent or reduce losses to the FDIC or FSLIC insurance funds. This is particularly significant because the Justice Department may be unable to use grand jury information because it does not meet the higher standards required for criminal prosecutions or because the demands of more serious criminal cases postpone action on crimes involving financial institutions. The same information however, could be significant to a Supervisory Agency either to support civil action or to initiate its own examination or investigation of the matter.

Tracking and Information Systems Regarding Criminal Referrals and Investigations

Paragraphs 16 through 18 recite the agreements reached relative to tracking and information systems maintained about the individuals named in criminal referrals. As a result of the agreements reached in this area, all of the Working Group members will have access to valuable information in connection with carrying out their respective responsibilities. For example, the Justice Department now may be able to determine if a suspect referred by one Supervisory Agency also has been referred for a similar crime by another Supervisory Agency in another jurisdiction. (Paragraphs 16-17.) Moreover, a Supervisory Agency may be able to access material information from the Justice Department about individuals filing change in control applications with the Agency. (Paragraphs 14(c), 16 and 17.)

Training

The Working Group has agreed to coordinate and share training courses and other training resources in the area of white collar crimes involving financial institutions. In particular, the FBI already has agreed to present special training for examiners from the Supervisory Agencies, and other courses to be made available to the Working Group members are identified in Paragraphs 19(a) through (d).

The Right to Financial Privacy Act

The restrictions of the Right to Financial Privacy Act ("RFPA") have impeded the criminal referral process in a significant manner over the last several years. The Working Group members are unanimous in their belief that a clarifying amendment with respect to the customer notification requirements of the RFPA should be enacted for the transfer of information to the

Justice Department for its use in conducting a criminal investigation or prosecution. (Paragraph 20.) The current customer notice provisions of the RFPA are ill-advised in two major respects. When customers who are "victims" or who are otherwise uninvolved in the suspected criminal conduct, receive notice under the RFPA upon transfer of their financial records to the Justice Department, it causes unnecessary confusion and concern. However, when the suspected perpetrator of the crime receives such a notice, the Justice Department is concerned that he may take action to destroy evidence or otherwise to cover-up his wrongful conduct.

Because of these problems, the Working Group's Agreements provide that the Supervisory Agencies will implement procedures to ensure that criminal referrals are made in a manner that does not require notice to customers. (Paragraph 21.) This will sometimes result in referrals that omit the names of customers or copies of customer records of "protected" customers when the referrals are made, and which will require the issuance of Grand Jury subpoenas to obtain the omitted information without customer notice. However, the Working Group has agreed to operate under this procedure until and unless a corrective amendment to the RFPA is enacted. This does not mean that referrals will be abbreviated by not explaining fully the suspected crime; rather, the referral will omit identifying the protected customer or financial records only, and will otherwise report all of the pertinent facts requested on the referral form.

Equally important is the fact that the Working Group members have agreed to support a clarifying amendment to the RFPA that would provide an exception to the customer notice requirements for any transfers of information lawfully in the possession of one government authority (_i.e._, a Supervisory Agency) to another government authority (_i.e._, the Justice Department) for a law enforcement purpose. (Paragraph 20.)

The Bank Bribery Act

Paragraph 23 points out that the Working Group has addressed and will continue to pursue issues related to the new Bank Bribery Act at 18 U.S.C. § 215.

Continuation of the Working Group

Finally, the Working Group has agreed to continue its existence in order to complete the implementation of the matters agreed upon and to serve as a continuing _ad hoc_ committee to discuss problems and to resolve matters of common interest and responsibility. (Paragraph 24.)

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

JUN 17 REC'D

June 11, 1985

Honorable Don Edwards
Chairman
Subcommittee on Civil and
  Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear Mr. Chairman:

During your April 25, 1985 authorization hearing concerning the Economic Crime Index and the National Crime Information Center (NCIC), Subcommittee staff requested information regarding the number of individuals who commit crimes in more than one state. In response to this inquiry, FBI representatives advised that there was some information available reflecting the mobility of criminals which could be furnished to the Subcommittee. Such information has been located and is enclosed.

The first enclosure is a report by the Interstate Identification Index (III) Subcommittee of the NCIC Advisory Policy Board reflecting Phase II findings of the III. At pages 1-1 through 1-12, there is information and data concerning the multistate/single-state status of criminal records. The second enclosure entitled "National Crime Information Center Interstate Identification Index" reflects the number of records indexed in the III as of April 30, 1985, for individuals who are multistate and single-state offenders. The third enclosure entitled "Criminal Records Provided VIA III" documents the number of records requested through the III System during April 1985 and reflects the number of records requested from the 17 participating states.

I hope the above remarks and the enclosures will be of assistance to the Subcommittee. If I can be of any further assistance please let me know.

Sincerely yours,

William H. Webster
Director

Enclosures (3)

NATIONAL CRIME INFORMATION CENTER
INTERSTATE IDENTIFICATION INDEX (III)

File Status

The following represents the III File as of April 30, 1985:

Individuals Indexed
Single-State Offenders - 7,599,662
*Multistate Offenders - 1,668,670 (18% of total)
Total - 9,268,332

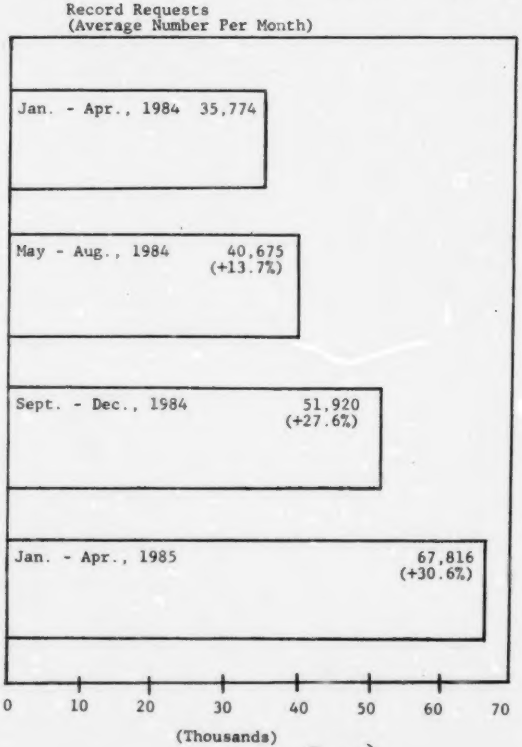
Records Indexed

State	Single-State	Multistate	Total
California	733,826	122,730	856,556
Colorado	55,275	16,683	71,958
Florida	698,051	87,907	785,958
Georgia	284,978	43,152	328,130
Idaho	1,691	361	2,052
Michigan	304,142	78,209	382,351
Minnesota	44,856	7,391	52,247
New Jersey	246,508	55,589	302,097
New York	740,842	97,805	838,647
North Carolina	149,395	40,148	189,543
Ohio	210,648	31,951	242,599
Oregon	70,504	18,064	88,568
Pennsylvania	63,113	7,436	70,549
South Carolina	172,392	28,149	200,541
Texas	493,747	87,215	580,962
Virginia	54,947	10,763	65,710
Wyoming	2,102	987	3,089
Total	4,327,017	734,540	5,061,557
FBI (Single-State and Multistate Status Unknown)			4,832,409
		Grand Total	9,893,966**

* A multistate offender has been arrested in more than one state or arrested for a Federal offense.

** Grand total of records indexed exceeds the number of individuals indexed because 18% of the individuals are multistate offenders.

CRIMINAL RECORDS PROVIDED VIA III



Interstate Record Exchange
April, 1985

California	- 4,323
Colorado	- 540
Florida	- 5,087
Georgia	- 1,549
Idaho	- 38
Michigan	- 1,665
Minnesota	- 255
New Jersey	- 2,446
New York	- 3,245
North Carolina	- 1,305
Ohio	- 1,203
Oregon	- 589
Pennsylvania	- 350
South Carolina	- 912
Texas	- 2,536
Virginia	- 460
Wyoming	- 51
Total	- 26,554
FBI	- 48,219*
Grand Total	- 74,773

* The FBI provides records primarily for Federal offenders and persons arrested in nonparticipating states. An unknown number of these records were provided back to the state of arrest and would not have been an interstate record exchange if the state participated in the III test program.

DESCRIPTION OF THE INTERSTATE IDENTIFICATION INDEX (III)

The Interstate Identification Index (III) is an automated system which provides for the interstate exchange of criminal history record information. Functioning as a part of the National Crime Information Center (NCIC), the III includes the personal identifiers of over 7.9 million individuals with criminal arrests and provides the location of the data bases maintaining the criminal history record information.

This cooperative effort between the FBI and the participating state agencies provides three essential services.

1. An authorized criminal justice agency can make an inquiry based on name and numeric identifiers (date of birth, Social Security Number, etc.) to determine if a criminal record for the individual is indexed in the III. Upon receipt and review of a positive response, the inquiring agency can decide whether to request the actual criminal history information from the data bases identified as maintaining such information.

2. The III provides a means for requesting a criminal history record once a person has been associated with an Index record, or when the person has been positively identified with a prior record through fingerprint comparison at the state or local level. Requests made online via III result in automatic notification to the record holder(s) and provide sufficient information enabling the holder(s) to respond directly to the requesting agency.

3. The III continually interfaces with participating state systems to provide status information regarding the states' records. When a person is arrested for the first time in a participating state, the state is advised if the record is single-state (no Federal arrests or arrests in other states) or multistate (arrests have occurred in other than the participating state). When the status changes from single-state to multistate or multistate to single-state, the participating state is automatically advised. The status information is provided by the FBI Identification Division from fingerprint cards submitted by arresting agencies. This service becomes an integral part of the processing of fingerprint cards by state identification bureaus. Once an offender is indexed in III, the state bureau can better serve agencies within the state since it will know when additional records are maintained elsewhere. If the state can identify a fingerprint card with a prior record, local agencies can be provided a complete record by the state without waiting for the fingerprint card to be processed by the FBI.

EVENTS PRECEDING THIS TEST PHASE

The findings of the Phase I test of the Interstate Identification Index (III) (February - March, 1982) were presented to (1) the III Subcommittee at its meeting on June 14-15, 1982, (2) the III Evaluation Group, and (3) the NCIC Advisory Policy Board at its June, 1982, meeting. The first phase testing was considered to be successful.

The Board at its meeting June 16-17, 1982, took the following actions concerning the III:

The Board accepted the III Evaluation Group and III Subcommittee evaluations of Phase I testing, and recommended the FBI proceed with a Phase II test.

A motion was passed to accept the eight major items presente in the Subcommittee report. The eight major items are:

1. NCIC proposed minimum standards for state III participation with the following change: Part III (A) should read, "The state agrees to respond immediately to III record requests via NLETS with the record or an acknowledgment and notice when the record will be returned."
2. Index records established and maintained for the states in the III must be records in the AIDS System.
3. Only one type of record response will be available via III and should be referred to as a III record response (summary records and complete records will no longer be an option via III).
4. NCIC will continue to process III record requests and notify the state(s) of record when a request is received. The recommendation is made to the Board that III Phase II proceed as planned and the feasibility of testing NLETS participation in inquiry response be referred to a joint committee of the Board and FBI in conjunction with NLETS. A committee report should be presented at the next Board meeting.
5. Regarding inquiry processing, an Index inquiry should not automatically cause notification to the state(s) of record. A second record request via NCIC should be required.

6. III record responses from the states may be by NLETS or the mail.

7. III inquiries for employment and licensing purposes will be prohibited during the next phase of III testing.

8. Revised III Development Schedule as proposed.

A motion was passed that approval be given to the proposed functional design for Phase II testing as prepared by the FBI and modified by the III Subcommittee.

On July 15, 1982, NCIC published the "Phase II, Functional Design and Proposed Technical Specifications." This document was provided to each of the 50 states along with a letter requesting that the material be reviewed and NCIC be advised if the state was interested in participating in Phase II.

Seventeen states responded that they were interested and, upon preliminary review of the material, could meet the requirements. These states were:

California

Colorado

Florida

Georgia

Illinois

Maryland

Michigan

Minnesota

Nebraska

New Jersey

New York

North Carolina

Pennsylvania

South Carolina

Texas

Virginia

Wyoming

On August 10-11, 1982, a Technical Conference was held in Alexandria, Virginia. Attending were representatives from each of the 17 states, the National Law Enforcement Telecommunications System, Inc. (NLETS), and the FBI. The State of Arkansas sent representatives as observers. The purpose of the meeting was to refine and finalize the design and technical specifications. Based on the recommendations made, NCIC published the "Phase II, Operational and Technical Manual" on August 20, 1982.

On December 7, 1982, the III Subcommittee met. At that time, there were 15 states actively working toward Phase II participation. (The States of Illinois and Maryland declined to participate due to fiscal and technical constraints.) At its meeting, the Subcommittee passed the following motions which were adopted by the Board at its meeting on December 8, 1982:

1. A new purpose code "J" be added for III inquiries to represent an inquiry for "criminal justice employment."

2. Adopted a transition plan for moving from the Computerized Criminal History (CCH) File to the III method of record exchange.

3. Applied the Security and Confidentiality section of the "NCIC Computerized Criminal History, Background, Concept and Policy" (amended by the NCIC Advisory Policy Board, June 18, 1981) to the III.

4. Disallowed the use of purpose code "R" (request by subject of record for review and/or challenge purposes) for III. Record requests for this purpose must be made by correspondence to the FBI.

5. The present agreement between the FBI and the states concerning adherence to NCIC policies and procedures shall serve as the agreement concerning all policies, procedures, and standards approved by the Board.

6. The composition of the III Evaluation Group be changed from 17 to 18 members, and Florida user, two user states other than Florida and Florida State Bureau be changed to '5 state or local representatives from III participating states'.

The joint committee report was accepted on the feasibility of testing III inquiries via NLETS. The report stated that a test or measurement of this alternative for retrieving criminal history data was not feasible during Phase II.

In order that the users of the III at the terminal operator level would have a document explaining the program and its operation, NCIC prepared the "National Crime Information Center, Interstate Identification Index, User's Guide" which was published December 22, 1982.

On January 13, 1983, the III Evaluation Group met in Arlington, Virginia. The purpose of the meeting was to familiarize the Group with plans for Phase II testing as well as to review and comment on the proposed data collection instruments and methodology. In addition to the Group members, the meeting was attended by representatives of the U. S. Department of Justice, the National Law Enforcement Telecommunications System, Inc. (NLETS), and the FBI.

The scheduled date for implementing Phase II was set for January 17, 1983. For evaluation purposes, the test would run from February 1 through April 30, 1983. Technical difficulties delayed the implementation of Phase II until February 7, 1983. At that time, the III became operational for inquiries and limited updating. Full updating capability was implemented on March 19, 1983. The second test phase was rescheduled for May - June, 1983.

A State Technical Conference was held on May 25, 1983, in Arlington, Virginia. Attending were representatives of the 15 states, NLETS, and the FBI. This meeting is covered in greater detail in the chapter entitled Operational and Technical Considerations.

INITIAL ESTABLISHMENT OF III DATA BASE

Using the identification data of records in the FBI Automated Identification Division System (AIDS), III records were established identifying the III participating states, the Federal Offender File (FOF), and/or AIDS (for nonparticipating state data) as maintaining criminal history information on the individual. The AIDS data base contains all criminal records for persons with a year of birth of 1956 and later and the records of persons arrested for the first time since July, 1974, regardless of year of birth. In addition, those records maintained in the Computerized Criminal History (CCH) File that were not also in AIDS were indexed in III and identified the FOF and/or a state(s) participating in the CCH File as maintaining criminal history data on the individual. The nonparticipating state data for these records was entered in the FOF.

The AIDS records containing arrests in the participating states were provided to each state on magnetic computer tape. After comparing the AIDS data against its state file, each state prepared a computer tape identifying those records for which it wanted responsibility for dissemination. Upon receipt of the states' tapes, the FBI established the State Identification Numbers (SIDs) in the III. A computer tape was then prepared for each state to synchronize the state file with III and set corresponding single-state/multistate status flags in state records.

Some of the states that participated in the CCH File included many of their non-AIDS records on the computer tape submitted to the FBI. This data was indexed in the III with the state's SID and is disseminated by the state. Upon request, the FBI will provide III participating states with a computer tape containing its FOF data. If, after comparing the data with its state file, the state desires to assume responsibility for this data, it will be indexed for the state and removed from the FOF.

INTERFACE WITH PARTICIPATING STATE AGENCIES

The addition of new records in III and the maintenance of existing records is accomplished primarily through an interface with AIDS. These transactions are based on arrest fingerprint cards and other documents submitted to the FBI Identification Division.

On March 19, 1983, the full capability of updating the III from AIDS became effective. The AIDS updates or modifications to the III are batched on computer tape and processed by the NCIC III System. Due to the delayed implementation of this capability, there was a backlog of updates to be processed. Since July 1, 1983, however, updating of the III from AIDS has been accomplished within 24 hours after the transactions have been internally processed by AIDS.

Unsolicited messages are transmitted in an online real-time mode to participating states when updates or modifications effect records maintained by the states. In addition, when a state transmits a message to enter or modify its SID in an III record, the III will advise the state of the single-state/multistate status of the record via an unsolicited message. The types of updates/modifications that generate the unsolicited messages are set out below.

Update/Modification Type	Message Type
NCIC III Record Consolidation	CON
Deceased-SID Number Retired	DEC
SID Number Expunged	EXP
Fingerprint Class Change	FCC
Multistate Offender	MSO
Nonmatching SID	NMS
No Prior Record - NCIC III Record Established	NPR
Prior Record - SID Number Entered in NCIC III Record	PIR
SID Rejected - No Prior NCIC III Record	RNP
SID Rejected - Prior NCIC III Record	RPR
Single-State Offender	SSO

The table on the following page reflects the volume of unsolicited messages by type transmitted to each participating state during the Phase II test.

UNSCLICITED UPDATE/MODIFICATION MESSAGES

	CON	DEC	EXP	FCC	MSO	NMS	NPR	PIR	RNP	RPR	SSO	TOTAL
California	402	0	201	11	1,684	509	641	65	0	0	18	3,531
Colorado	55	0	15	1	292	29	2,199	495	312	64	2	3,464
Florida	293	0	274	21	2,273	10,359	17,866	3,172	58	53	34	34,403
Georgia	204	0	72	6	645	1,438	14,775	1,349	90	14	1	18,594
Michigan	47	0	109	9	1,149	1,681	5,260	325	335	30	3,327	12,272
Minnesota	5	2	12	3	62	11	1,377	130	10	4	46	1,662
New Jersey	94	0	88	5	675	275	4,727	640	63	43	1	6,611
New York	188	0	5,080	21	1,743	1,203	31,269	1,968	316	46	12	41,846
North Carolina	34	0	10	4	595	148	5,380	481	68	17	267	7,004
Pennsylvania	7	4	12	4	53	89	8,286	695	67	31	178	9,426
South Carolina	105	0	586	14	739	4,287	6,798	525	165	19	649	13,887
Texas	182	0	47	14	3,385	5,644	17,176	2,096	447	74	12,396	41,461
Virginia	6	0	6	1	69	9	4,891	603	22	24	193	5,824
Wyoming	0	0	0	0	4	2	311	107	12	1	2	439
Total	1,622	6	6,512	114	13,368	25,684	120,956	12,651	1,965	420	17,126	200,424

While primary III maintenance is provided by AIDS, the participating states have online maintenance capabilities. These stat maintenance capabilities are as follows:

- removal of its SID from an III record when the subject is known to be deceased (DEC message)
- removal of its SID from an III record when the record can no longer be supported at the state level (other than death, e.g., count ordered expungement) (DRS message)
- entry of its SID in an III record or modifying an incorrect SID (MRS message)
- entry of supplemental identifiers (i.e., aliases, addition dates of birth, etc.) (EHN message)
- removal of supplemental identifiers from its single-state records (XHN message) Since supplemental identifiers entered by one state may be applicable to the subject's record in another participating state, the states do not have the capability of removing supplemental identifiers from a multistate record.

During the May - June test, III participating states used their online maintenance capabilities to effect modifications to their III records. The table below provides the activity of each state by type of transaction.

	DEC	DRS	EHN	MRS	XHN	TOTAL
California	0	228	0	1	0	229
Colorado	0	0	0	0	0	0
Florida	2	513	0	43	0	558
Georgia	0	0	0	0	0	0
Michigan	0	236	997	3,649	4	4,886
Minnesota	0	0	0	50	0	50
New Jersey	0	0	0	0	0	0
New York	63	19	0	7	0	89
North Carolina	30	8	18,728	304	12	19,082
Pennsylvania	0	50	1	203	0	254

	DEC	DRS	EHN	MRS	XHN	TOTAL
South Carolina	0	599	11,620	860	287	13,366
Texas	0	65	6,805	14,509	30	21,409
Virginia	0	8	0	107	0	115
Wyoming	0	7	0	2	0	9
Total	95	1,733	38,151	19,735	333	60,047

THE NCIC FEDERAL OFFENDER FILE (FOF)

The Federal Offender File (FOF) exists in NCIC primarily to house the records of persons arrested for a Federal offense. The FOF is being used in the transaction from the NCIC Computerized Criminal History (CCH) File to III. FOF records may therefore contain nonparticipating state data when the record is not automated in AIDS.

The criteria for entry of a criminal history record in FOF is a Federal arrest on or after January 1, 1970. An automatic interface between AIDS and FOF provides for the entry of Federal arrest data and related information (final disposition, custody, etc.) in FOF for those Federal offenders with a year of birth of 1956 or later or whose first Federal arrest date is July 1, 1974, or later regardless of year of birth. Federal offender records for persons not automated in AIDS are entered by NCIC personnel.

During the Phase II test, the number of records in the FOF increased from 679,673 on May 1, 1983, to 696,782 on June 30, 1983. These 17,109 records were entered in FOF from AIDS. No new non-AIDS records were entered in FOF; however, the existing records were updated and/or modified as necessary.

RECORDS AVAILABLE DURING THIS TEST

Between January 1 and May 1, 1983, state agencies in 9 states, California, Colorado, Florida, Georgia, Michigan, New York, North Carolina, South Carolina, and Texas, submitted computer tapes identifying their criminal records to be indexed in III. The index records for these states were established and available at the beginning of the test on May 1, 1983. The computer tapes to establish an index for Minnesota and New Jersey records were not processed until the states were ready to respond to record requests (June 4, 1983). A computer tape for Virginia was processed on June 25, 1983.

The state agencies in Pennsylvania and Wyoming determined they would not immediately assume responsibility for older records (prior to January 1, 1983). No computer tape was used to establish records for these states; however, new records were indexed as fingerprint cards were received on first offenders from the states.

The FBI online updating process added new records to III, and state identification numbers to old records in III, as fingerprint cards were received and processed from each of the states. The only exception was updating for California offenders which did not begin until after the test period (July 21, 1983). The California agency requested that updating not be done until some internal technical matters were resolved, and coordination was completed between the FBI and California regarding the processing of state identification numbers that appeared on fingerprint cards submitted by California.

An analysis was made of the III index records after the conclusion of the test period. Based on the date that state identification numbers were added to the file, record totals for each participant were compiled. A similar method was used to tabulate records made available from the Federal Offender File (FOF) and Automated Identification Division System (AIDS).

INTERSTATE IDENTIFICATION INDEX

FILE ANALYSIS

Record Source	Number of Records Available		
	5/1/83	6/1/83	7/1/83
California	582,058	582,522	582,521
Colorado	55,480	56,-73	58,166

Record Source	Number of Records Available		
	5/1/83	6/1/83	7/1/83
Florida	663,552	671,415	684,487
Georgia	222,195	237,837	247,912
Michigan	334,440	336,973	341,278
Minnesota	105	105	35,103
New Jersey	- 0 -	- 0 -	236,402
New York	553,232	565,967	585,772
North Carolina	122,601	144,231	147,869
Pennsylvania	880	4,538	9,782
South Carolina	153,675	155,991	160,628
Texas	432,427	454,549	468,908
Virginia	245	2,421	27,683
Wyoming	36	194	443
Subtotal	3,120,926	3,213,216	3,586,954
FOF	679,673	686,162	696,782
AIDS	3,937,342	3,982,756	4,051,573
Grand Total	7,737,941	7,882,134	8,335,309
*Number of Index Records	7,646,829	7,742,437	7,896,831

* The number of index records is the number of individuals represented in the III. This number is less than the number of records available because some individuals have records in more than one state, the FOF or AIDS.

An examination of III was made concerning the number of records representing single-state and multistate offenders. A single-state offender is a person with a record in only one state. A multistate offender is a person with a record in two or more states, or a record for a Federal offense. The examination was based on records established on or before May 1, June 1, and July 1, 1983. The results are:

	5/1/83	6/1/83	7/1/83
Number of Index Records	7,646,829	7,742,437	7,896,831
Single-State Offenders	6,200,373 (81%)	6,288,675 (81%)	6,431,917 (81
Multistate Offenders	1,446,456 (19%)	1,453,762 (19%)	1,464,914 (19

MAR 15 1985

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

March 13, 1985

The Honorable Don Edwards
Chairman
Subcommittee on Civil and Constitutional
  Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter to the Attorney General concerning your interest in the proposed inclusion of an economic crime index in the National Crime Information Center system.

White collar crime continues to be a multi-billion dollar drain on our economy. It is therefore costly to all Americans, the indirect victims as well as the direct ones. It is also costly from a social standpoint, in that it prompts public cynicism concerning the fairness of our criminal justice system because white collar criminals — many of whom are relatively affluent — seem infrequently to be brought to justice.

White collar crime also continues to be difficult to investigate, as is any crime that succeeds by fraud, stealth, and cover-up. A principal investigative difficulty is the lack of an efficient means of exchanging information about white collar criminals whose crimes, either simultaneously or sequentially, affect victims in several jurisdictions. This hinders investigations of major procurement frauds and bank frauds, and significantly hinders investigations of direct exploitation of individuals on a large-scale, systematic basis. The Federal Bureau of Investigation and other agencies have found that a small number of criminal offenders is responsible for a disproportionate amount of the fraud occurring in this country, yet there is no system for making the scattered information about such offenders available to the investigators in need of it. Today, exchanges of information among investigative agencies are attempted, in accordance with the various laws and regulations applicable to the different jurisdictions, but they are accomplished only on an ad hoc, hit-or-miss basis, with none of the routine efficiency that is required for uncovering sophisticated offenses. Most cases require a manual search of the indices and files at each field office of each agency in order to determine if two or more law enforcement agencies, or even two or more field offices of the same agency, have received separate complaints concerning the same offender.

It was for these reasons that the Department's Economic Crime Council proposed the development of a more effective means of exchanging economic crime information. An early, general proposal for more effective transmission of information was recommended by a Council subcommittee and approved by the Council at its December 1983 meeting. At a May 1984 meeting of the Council, after a discussion concerning costs and alternatives, the recommendation evolved into a proposal to explore the use of the NCIC system for the purpose. That proposal was strongly re-endorsed at the Council's January 1985 meeting. The concept is that an Economic Crime Index addition to the system would provide a means by which separate law enforcement agencies would be able to store the identities of the subjects of serious economic crime investigations for the duration of the investigations and subsequent prosecutions. If two or more law enforcement agencies were to make identical entries into the ECI through their NCIC terminals, each would be notified of the other's interest in their common economic crime subjects.

This is the background of the proposal that was the subject of the FBI staff paper you mentioned in your letter. I should note, however, that the description in the letter of how the system would operate is not entirely accurate since the file would be not for *access* by all users but for *entry* by all users; the only information received *from* the file would be the previous or subsequent entries identical to a user's entry. Moreover, the proposed ECI information — if included in the NCIC system — would not be the system's first data base derived from other than public records; today's data banks on stolen property and missing persons are also based on other information. We are confident that the proposal will lead to the eventual adoption of a system that is not only effective, but eminently reasonable.

Enclosed, pursuant to your request, is a copy of the only material sent to the members of the Economic Crime Council that relates to the subject of an ECI — an extract containing the original proposal, developed by a Council subcommittee, that was distributed for use at the December 1983 meeting. Enclosed also is a copy of the order creating the Council.

We appreciate your interest in this subject. The Department is determined to help increase the Nation's effectiveness against white collar crime, and we look forward to your future support.

Sincerely,

D. Lowell Jensen
Associate Attorney General

Enclosures

PROPOSALS

1. That the Department of Justice meet with the IRS to successfully simplify the procedure of referral and approval of criminal tax cases. It is of the utmost importance that these cases be more quickly moved along so they can have the maximum impact.
2. That the feasibility of establishing a central computer system containing input from other pertinent Federal investigative agencies (such as the U. S. Postal Inspectors Service, the Commodity Futures Trading Commission, and the Securities and Exchange Commission) along the lines of the FBI Con-Man Index, be further explored.
3. That representatives from the Fraud Section, Department of Justice and the White-Collar Crimes Section, FBI Headquarters continue to meet with representatives of the bank regulatory agencies to discuss problems associated with the timely and effective referral of criminal cases, along with supporting documentation. At this time, it does not appear that legislative remedies are needed, but the activity should be an Operations Committee priority project.
4. That the Attorney General's Advocacy Institute commence a fourth week of training in 1984 on fraud and corruption for second year Assistant United States Attorneys, and a part of that program include the identification and investigation of professional confidence men.

5. That once a professional confidence man case is identified and the concerned United States Attorney does not have the manpower to address it, the United States Attorney should contact the Office of the Executive Director of the Economic Crime Council. If the Special Agent in Charge (SAC) of the concerned FBI field office does not have sufficient manpower to address the case, the SAC should re-examine his White-Collar Crime Program to see if manpower can be diverted from lower priority White-Collar Crime investigations. The SAC can also consult with FBI Headquarters concerning the importance, or the priority of the investigation of the identified confidence man.

Office of the Attorney General
Washington, D.C. 20530

ORDER NO. 1015-83

Economic Crime Council

1. Purpose. This order establishes the Economic Crime Council (Council) and sets out the concept and guidelines for the direction of investigative and prosecutive resources of the Department of Justice against criminal fraud. It recognizes that certain economic crimes rise to a nationally significant level and accordingly requires a closer working relationship between and among the relevant Departmental personnel, the Inspectors General, law enforcement agencies and other governmental entities. The Council shall be comprised of certain United States Attorneys that will provide both a geographic coverage consonant with the Regional Inspectors General of the Departments and Agencies as well as the major commercial centers of the country, and shall also include representation from the Criminal Division and the Federal Bureau of Investigation. The Council shall be an advisory body to the Assistant Attorney General of the Criminal Division and the Associate Attorney General in connection with their efforts to direct the Department's white collar crime effort.

2. Scope. This Order applies directly to the United States Attorneys, the Criminal Division and the Federal Bureau of Investigation.

3. Objective. The Council will provide mechanisms to identify nationally significant economic crimes and offenses in areas related to:

- Federal defense and other federal procurement programs;
- Federally regulated industries such as securities, commodities, energy and banking;
- Federal benefit, contract, grant and loan programs in the fields of health care, housing, transportation, nutrition, business assistance, education, and income maintenance;

- Career white collar criminals;
- International white collar criminality such as money laundering schemes and major customs violations;
- Locally devastating economic crimes; and
- Such other areas as the Council may adopt.

To insure that nationally significant white collar crimes are prosecuted adequately, the Council will establish a mechanism for the United States Attorneys, Inspectors General and FBI to notify the Council when such cases or investigations arise in their office or district. The Council shall then be responsible for advising Departmental officials as to the needed allocation of resources to investigate and prosecute those significant cases effectively, and the monitoring thereof.

4. Establishment of Council.

a. The Council shall be comprised of the United States Attorney whose districts include the ten Federal Regional Centers and the United States Attorney for other selected federal judicial districts as designated by the Associate Attorney General. The other members of the Council shall be the Assistant Attorney General, Criminal Division and the Assistant Director of the Criminal Investigative Division of the Federal Bureau of Investigation. The Associate Attorney General will be a member of and chair the Council. The Council shall meet regularly. The Chief of the Fraud Section of the Criminal Division shall serve as Executive Director of the Council and be a member thereof. Staff support for the Council shall be provided by the Fraud Section of the Criminal Division.

b. The Council shall be responsible for providing advice in the following areas: identifying the nature and types of economic crimes and offenses that rise to the level of national significance; creating a method to identify such matters at a sufficiently early point in time for expeditious investigation and prosecution; establishing a system to measure the level of resources available for such matters when they arise; developing a centralized referral process for cases and investigations that meet the established criteria; and insuring adequate staffing for nationally significant cases.

c. Each United States Attorney's Office with representation on the Council shall establish and maintain an economic crime unit. The Assistant United States Attorney in charge of each unit shall be designated by the United States Attorney as the coordinating representative of the Council for that district.

d. Certain United States Attorneys' Offices Unit Chiefs, as designated by the Associate Attorney General, shall be members of the Operations Committee of the Council. The Committee shall make recommendations to the Council and implement the policies, directives and other decisions of the Associate Attorney General and the Assistant Attorney General, Criminal Division. The Chief of the White Collar Crimes Section of the Federal Bureau of Investigation will also serve on the Committee. The Assistant Attorney General, Criminal Division, shall chair the Committee.

e. In furtherance of the purpose of the Council, the Department of Justice through the United States Attorneys in each of the ten Federal Regional Centers (Boston, New York, Philadelphia, Atlanta, Chicago, Kansas City, Dallas, Denver, San Francisco and Seattle) shall designate an individual attorney (either the Chief or a member of the economic crime unit) to serve as a liaison between the Regional Inspectors General Offices and the United States Attorneys' Offices within that region. Said attorneys shall coordinate those activities with the Fraud Section of the Criminal Division, which has overall responsibility for structuring and directing the Department's program with the Inspectors General.

f. The Council shall encourage the exchange of litigating resources by advising the Executive Office for the United States Attorneys and the Criminal Division of the need for additional resources for limited periods of time to investigate and prosecute nationally significant cases.

5. Policy and Program Emphasis.

The primary focus of the Council is to identify and cause to be prosecuted on an expedited basis nationally significant economic crimes. In carrying out the directives of the Council and in implementing this Order the United States Attorneys, the Criminal Division and the Federal Bureau of Investigation will be responsible for:

- identifying cases, investigations and areas for investigations relating to the objectives of the Council, generating investigative and audit resources where required, seeking the necessary support and assistance from other parts of the Department where required;

- developing productive cooperative efforts among state, local and federal law enforcement agencies by utilizing contacts developed in the Law Enforcement Coordinating Committees and in particular investigations;

- conducting regional training and strategy sessions for federal auditors and investigators to raise and maintain their level of expertise;

- selecting special areas of government programs and practices vulnerable to fraud and corruption for audit and investigative attention in conjunction with the Inspectors General, the regulated industry agency investigators, the FBI, the United States Attorneys, the Criminal Division, and the President's Council on Integrity and Efficiency;

- serving as liaison between the United States Attorneys and the Regional Inspectors General, and among other federal law enforcement and regulatory organizations involved in the effort to detect and prevent future fraud and corruption;

- recommending to the Office of Legislative Affairs legislative initiatives to improve the criminal justice system.

6. Priorities. Specific priorities in the broad areas of fraud and corruption shall be developed annually for each federal judicial district by the appropriate United States Attorney from the national policies developed by the Council. The District white collar crime priorities are to be made a part of the District federal law enforcement plan and will be approved as an integral part of the plan approval process.

7. Training. The Criminal Division and the Executive Office for United States Attorneys shall maintain an ongoing training program for prosecutors to provide training in the most recent developments in the investigation and prosecution of economic crime cases. The Criminal Division shall continue the Bulletin on Economic Crime Enforcement and develop other methods to disseminate current investigative and prosecutive information to federal prosecutors, investigators and other government law enforcement authorities, consistent with the requirements of law.

8. Compliance. It is the responsibility of the Associate Attorney General to insure compliance with this Order.

9. Evaluation. The Associate Attorney General shall cause an evaluation of the Council and its accomplishments to be conducted two years from the date of this Order and every two years thereafter to recommend to the Attorney General the continuance, modification or revocation of the Council.

10. Revocation. Attorney General Order No. 971-82 is revoked.

Date: May 16, 1983

William French Smith
Attorney General

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JENSEN

GENERAL COUNSEL
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STAFF DIRECTOR
GARNER J. CLINE

ASSOCIATE COUNSEL
ALAN F. COFFEY, JR.

March 19, 1985

D. Lowell Jensen
Associate Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Jensen:

Thank you for your recent letter regarding the proposal to include an Economic Crime Index (ECI) in the National Crime Information Center (NCIC).

I share your concerns about the significance and societal costs of white collar crime, and I fully support all appropriate efforts by your Department to investigate and prosecute such offenses.

At the same time, there is of course an important distinction between the decision to pursue a problem vigorously and the choice of the means by which to do so. Certainly, we must fight crime, at all levels in our society. But we also have an obligation to preserve our fundamental constitutional liberties, including the right to privacy and the presumption of innocence.

The proposal to add an investigative file to the NCIC implicates precisely such constitutional principles.

Until now, with the exception of the Secret Service file, the NCIC has been limited to public record information. Investigatory data -- the suspicions, leads and observations of law enforcement officers -- have been kept off the system. (I cannot agree with your contention that the stolen property and missing persons files are precedents for the creation of an ECI.)

The ECI represents a radical departure for the NCIC. At this stage, I have a number of basic questions about the ECI and the current status of the proposal:

1) Is an ECI being established?

2) What information will be in the file?

3) Who will have access to the file?

4) Will the file include information on persons never arrested for or convicted of a crime?

5) What standard (probable cause, reasonable suspicion, disposition to commit a crime, allegations(s) from "reliable source(s)," no standard at all) will govern entry of information in the file?

6) Will the file include information on associates of those suspected of crimes?

7) What provisions will there be for removing names from the file?

8) If persons who have not been arrested will be entered into the file, how will identifying data be obtained and verified?

I would be much less concerned with the creation of an ECI investigative data bank internal to the FBI, along the lines of the ISIS and OCIS systems. A central concern with the inclusion of an ECI in the NCIC is the broad availability of the system.

Continuing uncertainties about the status and nature of the ECI proposal will probably require us to hold a hearing on the subject as part of our authorization process and to pursue the matter thereafter as well.

I look forward to your prompt responses to my questions.

Congratulations on your nomination.

Sincerely,

Don Edwards

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jdb

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

April 12, 1985

Honorable Don Edwards
Chairman, Subcommittee on
  Civil and Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

This is in response to your letter of March 14, 1985, requesting information concerning any additions to or expansions of the National Crime Information Center (NCIC) which are under consideration at the FBI, the Department of Justice or Subcommittees of the NCIC Advisory Policy Board (APB).

It may be helpful if I describe the procedures by which expansions or new uses of the NCIC are reviewed and approved. All operational aspects of the NCIC which reflect the needs of the criminal justice community are considered by the APB and discussed in open meetings which are held twice a year. Major changes to the system are reviewed by the APB and are often referred to Ad Hoc Subcommittees or Regional Working Groups for additional research or study. When the final research is completed, the APB votes, again in an open forum, on the proposal. If the APB favors the recommended new use or enhancement to the NCIC, the proposal is forwarded to me, and in certain cases to the Department of Justice, for approval prior to implementation.

Because of your interest in NCIC matters, your staff is notified when a meeting of the Advisory Policy Board is scheduled and they are invited to attend. In addition, your staff is furnished a copy of the minutes from the previous APB meeting and the agenda for the next meeting. These procedures were adopted to allow for the maximum amount of Congressional and public comment on the development of NCIC prior to the final approval or implementation of any significant modifications to the system.

Honorable Don Edwards

With one exception, any significant additions or expansions of the NCIC which are under serious consideration at this time were discussed at either the February or October, 1984, meetings of the APB which your staff attended. These are as follows:

a) Index the names in the Interstate Identification Index (III) of all persons protected under the Witness Security Program (WSP) who have a prior criminal record. This would result in immediate notification to the U.S. Marshals Service when a III inquiry is made concerning a person in the WSP. The Marshals Service would then contact the inquiring agency to provide appropriate assistance. This proposal responds, in part, to the Witness Security Reform Act of 1984 which requires the Attorney General "without undue delay" to advise state and local law enforcement agencies when a person in the WSP is under investigation for a violent crime or crime punishable by more than one year in prison.

b) Conduct a pilot study to determine the feasibility of including an Economic Crime Index in the NCIC. This study would be limited to 11 field offices of the FBI and those federal agencies which have direct access lines to NCIC.

c) Establish a file in the NCIC for foreign fugitives where an extradition treaty or convention exists between the United States and the foreign country. This would be similar to, and would eventually replace, the Canadian Warrants file which already exists.

d) Place a caution statement on a response to a III inquiry to advise that the individual is a firearms offender or a violent offender.

e) Establish procedures which will insure that a response to a name check in III includes the probation or parole status of the subject. When the inquiry is based on an arrest, the probation or parole authorities will be notified if they have previously requested such notification.

f) Place an indicator in the III which will advise the requester when the subject of the inquiry has a record in the Wanted Person file.

g) Provide access to the NCIC Wanted Person file by the National Center for Missing and Exploited Children.

The FBI has also asked the Department of Justice to concur in an off-line use of NCIC tapes by the FBI for classified intelligence purposes. Although this particular internal use of the technique has not been discussed at APB meetings, the members are aware of other applications of the off-line search which exist to benefit local and state law enforcement. Attached is an FBI/NCIC publication entitled "NCIC Off-Line Search" which describes some uses of this procedure.

In addition, the following matters have been considered by the APB and referred to the III or Planning and Evaluation Subcommittees of the APB: (a) implementation of an automated cross-search of the III, Wanted Person and Missing Person files so that an inquiry of any individual file would search all three files; and (b) notification of appropriate authorities when an inquiry in any NCIC file is made concerning a person on work release or awaiting sentence.

You should be aware that we have also implemented other internal procedures affecting the NCIC system which have not been formally approved by the APB. This is true, for example, of flags which are placed in the Automated Identification Division System (AIDS) on criminal records pertaining to individuals for whom arrest warrants are outstanding, FBI informants, persons protected under the Witness Security Program, and undercover Agents of the FBI or other federal, state or local agencies. These flags can be triggered by criminal record requests through the III, thereby notifying the Bureau that a record has been requested on one of these individuals. We also conduct an off-line search of all III record requests in order to capture those situations where the inquiry bypasses AIDS. These measures were adopted to protect the safety of the public and of law enforcement officers acting in an undercover capacity, and to insure that Bureau informants and persons in the Witness Security Program do not present a danger to the community.

If you have questions about these techniques or any of the proposals discussed above, please let me know.

Sincerely,

William H Webster

William H. Webster
Director

Enclosure

NINETY-NINTH CONGRESS

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U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515
Telephone: 202-225-3951

GENERAL COUNSEL
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May 2, 1985

Honorable William H. Webster
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20535

Dear Director Webster:

In your letter of April 12, 1985 regarding the National Crime Information Center (NCIC), you stated that a request to the Interstate Identification Index (III) pertaining to an individual in one of four categories will trigger a flag placed in the Automated Identification Division System (AIDS), thereby notifying the Bureau that a record has been requested on that individual. You also stated that the Bureau conducts off-line searches of all III requests to capture situations where an inquiry bypasses AIDS.

We would like to know whether similar procedures exist, or have existed at any time in the past year, with respect to individuals or categories other than those identified in your letter. If III requests are now or were in the past year used for purposes in addition to those identified in your letter, we would like to know what those other uses are or were, and if they were terminated, when they were terminated.

In addition, we would like to know whether the NCIC tapes are currently used for off-line intelligence purposes.

We would appreciate your response to these questions before the NCIC's Advisory Policy Board meets in Austin on May 22-23.

Sincerely,

Don Edwards

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jxd
cc: Phillip Brady
(Acting) Assistant Attorney General
Office of Legislative &
Intergovernmental Affairs

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director
Washington, D.C. 20535

August 7, 1985

Honorable Don Edwards
Chairman, Subcommittee on
Civil and Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

This is in response to your letter dated May 2, 1985, requesting information regarding procedures whereby criminal record requests through the National Crime Information Center's (NCIC) Interstate Identification Index (III) activate flags in the Automated Identification Division System (AIDS), as well as information regarding whether NCIC tapes are currently used for off-line intelligence purposes.

In addressing your concerns regarding flags in AIDS, the following information will assist in understanding the AIDS file and how it interacts with the III. AIDS was implemented in 1973 and involves the computerization of the criminal history records of first offenders as their arrest fingerprint cards are received in the FBI Identification Division. Over 8.5 million criminal history records have been automated to date and the file continues to grow at the rate of over three-quarters of a million new records each year. On February 7, 1983, these AIDS computerized criminal history records were made available through the NCIC's III to law enforcement agencies making criminal history record requests. The criminal record request is made by using either a state identification number or an FBI number. These numbers are routinely assigned by either the state or the FBI and uniquely identify an individual's criminal record.

I have been advised that the Identification Division has for many years maintained a system for flagging a criminal history record at the request of a law enforcement agency and notifying that agency whenever a request for the flagged record is made. A criminal record relating to an individual currently wanted for questioning in a major FBI investigation; a criminal record on a current FBI, Drug Enforcement Administration, or United States Secret Service employee; or a criminal record on a person now indexed in the NCIC Missing Person File, would have been the type of flagged criminal record that could have been activated by an III criminal record request via the NCIC. However, when it was realized that this procedure might be viewed as a new use of the NCIC, programming changes were initiated to ensure that III criminal record requests did not activate such flags. Because of complicated coding procedures relating to such matters, some of the changes took months to implement, with the last of this type flag being phased out during early 1985. None of these flags were activated via III transactions while they were being programmatically phased out. Currently, only four categories of flags can be activated by III criminal record requests. They are individuals for whom an arrest warrant is outstanding; FBI informants; persons protected under the Witness Security Program; and undercover Agents of the FBI or other Federal, state, or local agencies. Finally, with the successful completion of the final stage of III testing, it is possible, after consultation with the NCIC Advisory Policy Board, that additional criminal investigative flags may be incorporated into the III system.

You also specifically asked whether NCIC tapes are currently used for off-line "intelligence purposes." As you were advised in my April 12 letter and in the attachment to that letter concerning NCIC off-line searches, the NCIC will run off-line searches of NCIC tapes to assist in Federal, state and local investigations. Under current FBI practice, these searches can be conducted in connection with a criminal intelligence or foreign counterintelligence investigation. In addition, as I previously advised, because of particular sensitivities involved, the Department of Justice is now considering a proposal for an off-line use of NCIC log tapes for a classified purpose.

If I can be of any further assistance, please let me know.

Sincerely yours,

William H. Webster
Director

1 - Acting Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

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July 22, 1985

The Honorable William H. Webster
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20535

Dear Director Webster:

In your letter of April 12, 1985, you indicated that the Bureau was proposing to use National Crime Information Center (NCIC) tapes on an off-line basis for classified intelligence purposes. You also described certain Bureau uses of inquiries to the Interstate Identification Index (III) that have already been implemented.

Such uses, particularly of the records of III inquiries, appear to be inconsistent with assurances provided to the Subcommittee in the past regarding the NCIC and III. Such uses also threaten to revive the "message-switching" concerns that supposedly were disposed of a number of years ago.

At a Subcommittee hearing on October 22, 1981, I asked Assistant Director William A. Bayse about the record of III inquiries that would be maintained by the Bureau. Mr. Bayse stated:

> "It [the record of inquiries] would be simply retained in a secure area under a limited number of people with special handling in case some time along the line that inquiry record was needed for a purpose such as a question regarding who was at the terminal when this inquiry was made."

* * *

> It isn't part of any surveillance scenario, which we have never contemplated to begin with, and it does not constitute anything more than a record of a transaction that comes in, in accordance with good audit and operational practices, and then those inquiry records would be stored and not used for any future operational purpose."
>
> * * *
>
> "The inquiry is used for the purpose that I indicated, simply for retention in case it is needed to resolve some matter later."

Robert L. Edwards of the Florida Department of Law Enforcement, who testified at the 1981 hearing in support of the III pilot program, also sought to reassure the Subcommittee:

> "The concerns over the audit, we see those audit trails as being necessary tools so that we insure the right of privacy and insure an individual right through improper dissemination of a record is protected."

At a Subcommittee hearing on August 1, 1984, questions again arose concerning the record of III inquiries, and the record was again described as only an audit trail. Mr. Bayse stated:

> "The audit trails we keep on the index we have discussed before. It is good management practice to try to keep track of any accesses by anybody against that index."

At the August 1, 1984 hearing, Mr. Bayse and David Nemecek, NCIC section chief, both stated that the maintenance of an audit trail did not constitute message-switching.

Your letter indicates, however, that the Identification Division is using the III traffic, on both an on-line and off-line basis, for purposes not related to the exchange of criminal history records for four categories of subjects and that the Bureau is considering a further use for an unspecified intelligence purpose.

Such uses are certainly inconsistent with statements over the years that the Bureau would log III inquiries only for audit purposes and not for operational purposes.

They also run counter to the spirit, at least, of promises not to engage in message-switching. Congressional concerns with message-switching focused on fears that the FBI would control the exchange of criminal justice information among the states and would use that traffic for its own purposes. Yet it appears that, in the process of facilitating the exchange of criminal history records among the states, the Bureau is accumulating a significant data base -- the record of inquiries to III -- and is examining that data on a daily basis for its own law enforcement and intelligence purposes.

I also believe that the regularity and scope of the procedures described in your April 12 letter make such uses quite distinct from the off-line searches previously described by the Bureau.

FBI use of the III traffic, both current and projected, poses serious tracking implications. I am quite concerned, therefore, about these uses, even though the present ones may be limited. (We have asked whether other regular uses were in place at any time in the past year.) I understand that the NCIC Advisory Policy Board has requested that additional uses of III transactions be passed upon by the APB in advance. We too will want to scrutinize carefully any proposed expansion of such uses. To that end, I would like to request a briefing for Subcommittee staff on the proposed intelligence use mentioned in your April 12 letter.

I look forward to hearing from you on this matter.

With kind regards.

Sincerely,

Don Edwards

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jdd

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

September 19, 1985

Honorable Don Edwards
Chairman
Subcommittee on Civil and
  Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

This is in response to your letter of July 22, 1985 in which you raised concerns about the use of the National Crime Information Center (NCIC) Interstate Identification Index (III) log tapes and requested a briefing for staff regarding the proposed classified use of NCIC log tapes.

In 1981 the NCIC III concept was in the initial stages of development. FBI representatives deferred considering the effect the system would have on flagging practices used by the FBI Identification Division for law enforcement purposes until the NCIC had the opportunity to more completely test the basic III concept. As you know, the FBI Identification Division manual system and Automated Identification Division System (AIDS) contain flags on criminal records pertaining to individuals for whom arrest warrants are outstanding, FBI informants, etc. This technique is used by other law enforcement agencies and serves an important law enforcement function. With the growth of the III, the FBI noted that the flags in AIDS were being circumvented by a direct response from a participating state to an III request for a record. Therefore, these flags were reviewed and certain ones were identified as being so beneficial to law enforcement that the determination was made to conduct off-line searches of III record requests to capture those requests which by-passed AIDS.

Honorable Don Edwards

I am advised that the 1981 discussions before your Subcommittee on the uses of the log tapes were intended to be illustrative of the then current applications with a focus on the Subcommittee's concern that the tapes not be used for non criminal justice or non law enforcement purposes. When broader uses of the tapes became necessary in order to continue the level of service provided by the Identification Division, uses for reasons other than good data management were alluded to in the 1984 hearing and described in more detail in my April 12, 1985 letter to you.

The off-line search of III log tapes is not "message switching." "Message switching" is a basic telecommunications capability which permits a central site to receive a message, retain it until a line is available, then forward the message to the intended recipient.

With regard to the briefing you requested, FBI representatives will be available to discuss the proposed classified use of NCIC log tapes with your staff who have appropriate clearances at a mutually convenient time. Please ask your staff to coordinate this meeting with SA Margaret R. Owens, Congressional Affairs Office, telephone number 324-4515. If I can be of any further assistance, please let me know.

Sincerely yours,

William H. Webster
Director

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